The role of non-governmental organizations in the articulation and enhancement of participatory rights in environmental decision-making as evidenced in the process leading up to and after MiningWatch Canada v. Canada (Fisheries and Oceans), 2010 SCC 2

by

Kirsty Sewell
Bachelor of Arts, University of Victoria, 1987

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Supervisory Committee

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Abstract

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This thesis used case study research methods to examine the role played by Non-Governmental Organizations (NGOs) and the methods they use to increase public participation in environmental matters. It does this by investigating the process leading up to and following a Supreme Court of Canada (SCC) decision, that of MiningWatch Canada v. Canada (Fisheries and Oceans) (2010 SCC 2). Specifically, the strategies and methods used by NGOs in this study and their impact on public participation during and in the aftermath of the decision are examined. The primary research question is: what is the impact of NGOs on participatory politics as seen in the SCC decision, MiningWatch Canada v. Canada? Other research questions examined are: what role have NGOs had in increasing participation in environmental decision-making, and: how do NGOs increase public participation in environmental decision-making?

Three main groups of strategies are used by the NGOs: “Legal”, “Challenge or Inform Government”, and “Creating an Emotional Response in an Audience.” Strategies common to all NGOs in this study were: “Increase Knowledge” by “Networking,” “Working with Communities at a Grass Roots Level” and “Publications and Reports”. The argument this thesis presents is that democracy is a dynamic process and various strategies can be used to influence participation in environmental decision-making. Specifically, groups of citizens can form in response to an issue, raise public awareness and encourage legislation and policy changes in the search for social progress; in this case, increase public participation in matters involving the environment.

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Dedication

I dedicate this thesis to my family and friends. In particular, my mother, Elizabeth Sewell and step-father, Maurice Fellis, who were never-ending, vital sources of support for me during this process. Thank you for believing in me and for your constant encouragement.

It was impossible not to think of my father, Dr. W.R. Derrick Sewell, as I worked on the material, finding out as I did, that he worked himself in the area of participatory democracy and dispute resolution in resource development far before it was established practice. There is not a day that goes by that I don't think of him, miss him and wish I could speak to him about his work.

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CHAPTER 1

In June, 2001, UN Secretary General Kofi Annan called for international and regional organizations to work closely with civil society, using each group's area of expertise to spread the idea of conflict prevention (Marriot & Carment, 2003, p. 6). In response, in 2001, the European Centre for Conflict Prevention (ECCP) began a process of increasing the effectiveness of conflict prevention by improving the coordination and interaction between civil society, the UN, regional organizations and governments in order to mainstream the idea of conflict prevention (European Centre for Conflict Prevention; Marriot & Carment, p. 7).

Canada's response was to establish the Canadian Conflict Prevention Initiative (CCPI) in the lead up to the 2005 UN Conference on the Role of Civil Society and NGOs in conflict prevention (Marriot & Carment, 2003, p. 7). The CCPI's first task was to determine the range of actors engaged in conflict prevention in Canada and identify the most common themes related to this field of study (Marriot & Carment, 2003, p.7).

The CCPI report found that conflict prevention activities may address a conflict directly, including using tools such as mediation, preventive diplomacy, people to people contacts, advocacy, and negotiation efforts (Marriot and Carment, 2003, p. 11). It was found that the most common problems leading to conflict include resource allocation, corruption, ethnic or territorial disputes and economic inequality (Marriot & Carment, 2003, p. 8). All of these problems impact human rights including the most basic right of all, that of the 'right to life'. The "right to life" is described in Article 3 of the United Nations Declaration of Human Rights (1948) such that "everyone has the right to life, liberty and security of person" (*Universal Declaration of Human Rights*, G.A. res. 217A (III), U.N. Doc A/810 at 71).

The ‘right to life’ can be jeopardized related to issues such as poor enforcement of women’s rights, children’s rights, discrimination, inadequate health care, and environmental degradation. Environmental degradation involves rights such as “the right to health...the right to suitable working conditions, the right to an adequate standard of living and rights to political participation and information” (Hughes & Iyalomhe, 1998-99, p. 237). All of the problems listed by Hughes and Iyalombe and identified by the CCPI as factors leading to conflict can be seen on First Nations reserves in Canada and in particular, in the conflict analyzed in this thesis.

This thesis investigates the role that Non-Governmental Organizations (NGOs) have played in the definition and articulation of public participation in environmental decision-making and the strategies they use to increase public participation at the broad level, and specifically, in terms of assessing a court decision in Canada as it relates to these issues. This thesis also examines the role NGOs play in preventing conflict and enhancing human rights by increasing public participation in resource development processes. A case study method of inquiry is used to analyze a Supreme Court of Canada decision, MiningWatch Canada (MWC) v. Canada (2010 SCC 2), known as ‘Red Chris’, by investigating what happened prior, during and after the Canada Supreme Court decision and the impact on public participation in environmental decision-making, both short term and long term. The thesis argues that Canadians are increasingly facing challenges participating in environmental decision-making in assessment processes related to changes to law and policy implemented in 2010 and 2012.

The Red Chris court case centered on a proposed gold and copper mine located in Northwestern British Columbia in which the federal government originally scoped the project as a comprehensive federal environmental assessment, which meant there were federal departments involved in the project. Under the Canadian Environmental Assessment Act (CEAA) of 2003, a

comprehensive federal assessment included mandatory public participation under section 21 of the Act in both the scoping of the assessment as well as during the assessment itself. Section 21 of the Act deals specifically with the right of the public to participate in environmental assessment as a means of providing checks and balances in environmental decision-making to avoid degradation and ensure sustainability of projects (S.C. 2003, c. 9).

The open-pit mine, proposed by Imperial Metals, was cause for serious environmental concern since it posed significant potential for adverse environmental effects (Alexander, 2004; Nishimura, 2004; Tessaro, 2007, p. 29). The project was located adjacent to an area called the Sacred Headwaters, the birthplace of Northern BC's three greatest salmon rivers – the Stikine, Nass and Skeena Rivers (Mitchell, 2010).

The community most affected by the project had no information about the project, did not participate in decision-making processes about the project, which resulted in a prolonged conflict between the provincial and federal government, industry and within the Tahltan Nation itself.

This thesis examines the conflict in order to identify how costly long term, intractable conflict could have been averted by using conflict prevention processes including transparent, open procedures such as meaningful public participation prior to, during, and throughout the environmental assessment process. The thesis also examines the extent to which conflict can be the impetus for positive change.

One of the main concerns about the project were potential negative impacts on wildlife, including potentially destroying three trout-bearing streams and risking the toxic contamination of two watersheds (Mitchell, 2010). The project would also convert a fresh water lake, Black Lake, into a "tailings impoundment area", essentially a dumpsite for toxic mine waste. Despite these environmental risks, the Department of Fisheries and Oceans (DFO) and Natural Resources

Canada (NRCan) split the project into small pieces, removing the actual mine and mill from its environmental review (Mitchell, 2010). The project was then re-scoped at a screening level of assessment, which is the lowest level of federal assessment, requiring no public input in the evaluation of the scope and sustainability of the project (2007 FC 955, p. 54; 2010 SCC 2).

Mining Watch Canada (MWC), a federally registered non-profit society, had tried vigorously to comment about the project during the British Columbia environmental assessment process and had been told they would be able to vocalize their concerns during the comprehensive federal assessment process. When the project was re-scoped retroactively to a screening level of assessment, the group was shut out of commenting. As a result, a public interest argument was used by MWC, who were represented in court by federal legal not-for-profit organization called Ecojustice (MiningWatch Canada v. Canada (Fisheries and Oceans), 2010 SCC 2, [2010] 1 S.C.R. 6).

In its decision, the Supreme Court of Canada found in favour of participatory rights based on Section 21 of the 2003 CEAA, observing that federal agencies "were free to use any and all federal-provincial coordination tools available, but they were still required to comply with the provisions of the CEAA pertaining to comprehensive studies. By conducting a screening, the responsible authority acted without statutory authority" (MiningWatch Canada v. Canada (Fisheries and Oceans), 2010 SCC 2, [2010] 1 S.C.R. 6). A reassessment of the project allowing public participation was not required (MiningWatch Canada v. Canada, 2010 SCC 2).

1.1 Purpose of the Thesis

The thesis focuses on Canadian NGOs and the strategies and tactics they used leading up to, during, and after this SCC decision. Possibilities for further research into this area of study are also considered and will be discussed at a later point.

The main research question for this research is: "what is the impact of NGOs on participatory politics as seen in the SCC decision, MiningWatch Canada v. Canada (Fisheries and Oceans)? Other research questions examined in this thesis are:

- What were the immediate impacts of strategies on policy and legislation involving participatory rights in the aftermath of the Red Chris mine Supreme Court decision?
- What methods did NGOs in this study use to increase public participation in environmental decision-making?

The argument that this thesis presents is that democracy is a dynamic process and that various strategies can be used to influence participation in environmental decision-making. For example, when public participation levels are limited in environmental decision-making, there may be a risk of an increased environmental degradation affecting human and animal health. These groups perform a public service by bringing public attention to problems and identifying potential solutions and pressuring the citizenry and government to act (Kirkby, 2014, pp. 3-4; Phillips, 2010, p. 66). This action and the networking with other likeminded groups enhances citizenship, promotes issues of social justice, community building, provide employment and suggestions for alternative economic development (Kirkby, p. 4; Phillips, p. 66).

These groups are each focused on their own area of expertise, often working together in using a variety of strategies and methods to increase public participation in matters involving the environment with varying results. Some strategies seem to be more reliant on the political climate of the time, although further research would need to be conducted in order to support this given this thesis was a case study approach on a certain event and not a longitudinal study.

1.2 Significance of Topic

This topic directly relates to the relationship between democratic rights, environmental degradation and the role NGOs play in ensuring effective policies and procedures are met to secure human rights standards. Democratic rights and the important role that international NGOs have had in articulating and enforcing these rights have been well characterized (Welch, 2001, p. 273); however, there is a lack of relevant literature describing the array of strategies and tactics used by NGOs domestically and the effects of these strategies on policy (Nelson & Dorsey, 2008, p. 22). Research has focused on opportunities that have allowed NGOs to emerge and act, but not on the actions themselves (Smithey, 2009, p. 661). Studies have not been longitudinal (Welch, 2001, p. 274), have not tracked the effectiveness and impacts of actions over time (Nelson, Dorsey, p. 88) and have relied on qualitative study methods, which have traditionally been seen as lacking validity due to subjective data and methods (Cingranelli & Richards in Welch 2001, p. 227). Challenges to collect and analyze long term information are related to the size of organizations, their limited time, and their lack of resources (Cingranelli & Richards, p. 274).

Further, this study is significant because there are a very limited number of cases heard in Canada's Federal Court involving Environmental Non-Governmental Organizations (ENGOs) and human rights issues; in fact, Red Chris was the first time a federal environmental group had been given leave to appeal to the Supreme Court of Canada (Ecojustice/MiningWatch Canada). The value of this project is defined by addressing a gap in the literature dealing specifically with the value Canadian ENGOs provide in aiming to prevent conflict and human rights violations by including a wider range of people in environmental decision-making and the strategies, tactics and methods used to achieve this goal.

1.3 Theoretical Framework

The topic will be investigated through a neoliberal theoretical paradigm and the impact this ideology has had on human rights, particularly the ability to participate in environmental decision-making. To develop a better understanding of the context, the history and evolution of classical economic liberalism will be discussed, followed by the development of neoliberal ideology, and the impact of the globalization of neoliberal policies. The events occurring prior to, during and following Red Chris are then analyzed, including the timeline of events, actions on behalf of NGOs and their impact on public participation in environmental decision-making.

It has been argued that the most fundamental question facing humankind is the amount that government should intervene in the economy (Wolfe, 2009). In 1776, Scottish economist Adam Smith described classic economic liberalism as the notion of the free market, a philosophy supporting and promoting policy allowing business to operate with very little interference from the government in a market economy (Adams, 2001, p. 20). Smith believed that private interests should have a free rein and as long as markets were free and competitive, the actions of private individuals, motivated by self-interest, would work together for the betterment of society. Smith supported government regulation as a means of limiting monopolies, tax preference, the power of lobby groups and privileges extended to certain members of the economy at the expense of others. Governmental intervention was seen as necessary in the maintenance of public works in the areas of commerce, education, defense, justice, and the maintenance of a sovereign nation. Classic economic liberalism prevailed into the 20th century (Hudelson, 1999).

The widening disparity between rich and poor seen in the late 19th and early 20th century resulted in civic protests demanding greater social liberalism by emphasizing a greater role for the state (Hudelson, 1999, pp. 37-38). In 1929, the Great Depression began and American capitalism and the free-market economy collapsed, with many concluding that unfettered

capitalism had not achieved at a level that allowed for wide spread economic success (Keynes, 1936). The economic collapse and social disarray were blamed on classic liberal policies with calls for the promotion of a market economy under the guidance and rules of a strong state (Keynes). Keynes, considered to be one of the most influential economists of the 20th century, asserted that full employment was necessary for capitalism to grow, which was only possible through the intervention of governments and central banks. Keynes argued for stable wages during downturns in the economy and high levels of unemployment, believing that the government could bolster employment via public works programs. His ideas of deficit spending were revolutionary and initially met with opposition, due to balanced budgets being standard practice at the time. However, once the idea took hold, policymakers did not let it go. Keynsian economics is based on the premise that government expenditures on public goods have a positive effect on growth (Heitger, 2001). However, growth tends to decline or even significantly reverse when government is over-intervening in private markets, as in increasing expenditures in ways that produce private goods (Heitger). This was demonstrated in the mid-1970s, when a capitalist crisis over shrinking profit rates was attributed to the reliance on "demand management," socially liberal policies, which were seen to distort market prices, create major inefficiencies, and destroy production incentives (Anderson, 1993).

The repudiation of Keynesian welfare state economics resulted in a radical free market, coined “neoliberalism.” The term is a bit confusing as “liberal” tends to be associated with a progressive political viewpoint; however, in this context, neoliberalism as well as neo-conservatism is both associated with the political right (Brown, 2003). In this study, “neoliberalism” refers to liberalism’s economic or free market variant.

Neoliberalism has been described as the “downsizing of democracy” (Duggan, 2003, p. 1), "capitalism with the gloves off", (McChesney in Chomsky, 1999, p. 8. Giroux, 2004), and “the epitome of corporate narcissism in which the planet is a factory to be used” (Hunziker, 2014). Neoliberal economic policies advocate for the transfer of state power to the private sector for all resources and services, with policies seeking to create new kinds of market relationships promising superior results through the privatization of formerly publicly run programs (Starr, 1989). Policies call for the abolition of governmental interference in all economic matters, open markets, free enterprise, and removal of trade barriers and the mobilization of capital (Alston, 2005, p. 17-18; Chomsky, 1999, p. 20). Neoliberal policies reduce or eliminate governmental regulation on anything that could diminish private profits, including environmental protection, job safety and labor rights (McChesney in Chomsky, 1999, p. 8). Neoliberal policies lower taxes on the very wealthy, cut public expenditure for social services such as education and health care, and reduce the social safety net, while continuing government subsidies and tax benefits for business (Crotty, 2012; Chomsky, 1999).

In its most extreme form, neoliberalism has been described as Social Darwinism, seeking to apply biological concepts of survival of the fittest to politics and the economy, such that the ‘strong’ should be rewarded by an increase in wealth and power, whilst those deemed as ‘weak’, losing their wealth and power (Williams, Raymond, 2000, in Herbert Spencer's Critical Assessment, Offer (ed.), pp. 186–199). Opponents of neoliberal policies argue that there has been a segregation of ethical principles for economic affairs; economic rationality is a mere cost-benefit analysis and profit maximization is the driving force for growth and progress with an emphasis on winning, profits and individual gratification (von Werlhof, 2008, p. 95). According to von Welhof, the result of neoliberal policies has been a small minority reaping enormous

benefit, whilst the vast majority of the earth's population – human, non-human and the earth itself – suffer the effects of the globalization of the neoliberal agenda.

McChesney (in Chomsky, 1999, p. 10) argues that globalization of the neoliberal agenda has integrated the world's economy, whilst weakening traditional procedures of domestic governance, giving enormous power to large, faceless corporations, resulting in some states being "dwarfed by the power of transnational corporations, losing their authority to supranational organization bodies as state functions are privatized" (Alston & Goodman, 2012, p. 1477). Indeed, the problems associated with the regulation of transnational corporations have been discussed for decades, with attempts to create hard law and harmonized regulatory structures blocked by an alliance of business and state interests (Backer, 2009, p. 1). International "soft law" has not translated into national law as a means of regulating the behavior of transnational corporations, as had been intended by the United Nations' Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (Backer). The regulation of transnational corporate behavior has also been outsourced or privatized, with corporate self-regulation using 'voluntary codes of conduct'.

Voluntary codes of conduct are non-legislated codes of practice that influence, shape, control or set benchmarks for corporate behaviour in the marketplace, encouraging companies to self-regulate in ways that benefit both themselves and the communities in which they operate (Industry Canada. Office of Consumer Affairs). These codes have been described by human rights scholars as likely to take "a long time to ripen into moral obligation" (Alston, 2005, p. 20). Voluntary codes of conduct have also been referred to as 'corporate social responsibility', essentially another form of corporate self- regulation, described by Foreign Affairs, Trade and Development Canada as "the voluntary activities undertaken by a company to operate in an

economic, social and environmentally sustainable manner". It has also been depicted as enhancing "the economization of the political (Shamir, 2008, pp. 1-4) and as that which could free corporations from governmental pressures under a façade of morality" (Banerjee, 2008; Shamir 2004a; Gond & Moon, 2011, p. 3).

Public access to multiple sources of unbiased, non-partisan information, is essential in decision-making processes, and could be considered a cornerstone of democracy. Challenges to accessing unbiased information has been attributed to the globalization of neoliberal policies, including the increase in corporate ownership of the media. The concentration of media ownership has been ascribed to a global shift toward deregulation policies, which effectively remove governmental barriers and allow media firms to amalgamate as a means of increasing profit-margins and reducing risk to maintain a competitive edge (Huxley, 1958; Baker, 2007, p. 3). Media corporations say they need to amalgamate in order to remain competitive, that they are facing increased difficulty, particularly newspapers, as a result of competition from the internet. In reports about the five publicly traded newspaper companies in Canada, none have shown an annual loss going back to 2006 and in fact, make double-digit profits, which are more than twice the historical average for a Fortune 500 company (Edge, 2014). For example, Edge (2014) shows a compilation of the financial results of the five publicly traded Canadian newspaper companies which own 75% of Canadian newspapers.

Canadian newspaper revenues/earnings(millions)/profit margin

	2010	2011	2012	2013
FP	110/24/22.3%	111/23/21.0%	111/21/19.5%	106/20/18.9%
Glacier	242/44/18.1%	267/49/18.4%	330/50/15.3%	295/33/11.1%
Postmedia	1.05b/191/18.1%	1.02b/201/19.7%	831m/144/17.3%	751/130/17.3%
Quebecor	1.03b/200/19.3%	1.02b/150/14.7%	960/115/12.0%	784/98/12.5%
Torstar	1.01b/176/17.3%	1.09b/161/14.8%	1.06/145/13.7%	984/131/13.3%

Source: Company annual reports

(http://thetyee.ca/Blogs/TheHook/2014/10/15/Newspapers-Hard-Up-Or-Not/)

As a result, there is a reduction in the diversity of information provided, as well as the accountability of information providers to the public – resulting in a poorly informed public, restricted to a reduced array of media options presenting information in the best interest of the media oligopoly in analyzing and reporting news items (Baker, 2007, p. 3). Indeed, McChesney (in Chomsky, 1999, pp. 7-14) argues that neoliberalism is most successful when the average citizen does not have access to multiple, unbiased sources of information or political forums in which to successfully engage in decision-making processes during times when capitalist ideals and consumerism are heavily promoted, and corporate interests have virtually unlimited resources to influence media, the political process, and the way in which information is released to the public.

All over the world media outlets avoid addressing the problems created by neoliberal policies, due to the ideology's impacts being concepts that are not well understood, and cannot be adequately explained (vonWerlhof, 2008). However, it can be argued that the reason that neoliberal policy and the impacts are not investigated and explained more clearly is due to corporate control of the media, in whose interests it is that the public remain uninformed about the implications of neoliberal policies and their impact on virtually every citizen, everyday

(vonWerlhof). Government and industry have been successful in avoiding civic protest about the side effects of free market policy by controlling labour unions, police forces used to control civic dissent and through technology in the way protest movements are depicted in the media (Roberts, 2014).

This thesis found that public access to multiple sources of unbiased information is of utmost importance in environmental decision-making. The issue was addressed in 1992, at the United Nations Conference on Environment and Development in Rio de Janeiro (E/CN.17/1997/8). Principle 10 of the Rio Declaration deals specifically with participatory rights in environmental decision-making, such that access to information, access to public participation, and access to justice, are a means of ensuring that governments consider concerns over sustainable development (Paragraphs 60 – 66, p. 17). Principle 10 recognizes that environmental issues are best solved with the participation of all relevant stakeholders, best known as the "environmental democracy principle", that states that environmental issues are best handled by the participation of all concerned citizens, at the relevant level. Principle 10 declares that nationally, each individual shall have appropriate access to information concerning the environment held by public authorities, including information on hazardous materials and activities in their communities. Individuals must have the opportunity to participate in decision-making processes, with States facilitating and encouraging public awareness and participation by making information widely available and allowing effective access to judicial and administrative proceedings, including redress and remedy [Principle 10. Rio Declaration on Environment and Development. United Nations Environmental Programme].

The United Nations Environmental Programme (UNEP) has recognized the instrumental nature of civil society groups in the effective implementation, compliance, and enforcement of

environmental law in bringing cases involving environmental issues to national courts. This is demonstrated by the Red Chris case (MiningWatch Canada v. Canada Factum of Appellant, 2010, p. 35 – 36).

1.4 Organization of Thesis

This thesis begins with providing background information to develop a context for the rest of the thesis. Specifically, the BC and Canadian mining industries are discussed and both the strengths and challenges faced by the industry are outlined. Next, the primary actors and pieces of legislation investigated in this thesis involving the ability of the public to participate in matters involving the environment are introduced. After this, the literature review discusses democratic principles that lie at the base of dispute resolution/conflict prevention procedures, the relationship between democratic systems of governance and environmental degradation and the vital part played by NGOs in areas of social progress and challenges they currently face in Canada. This is followed by the methodology and methods used in this thesis in analyzing the data gathered through interviews and supported by the review of documents.

The findings from the interviews are described next, in an analysis of the conflict over Red Chris mine. Factors described by participants as reasons for the conflict and ways it might have been averted are then explored, followed by the strategies and methods used by the NGOs in this study. Next, the findings are analyzed and discussed, followed by the conclusion and suggestions for future research.

CHAPTER 2: BACKGROUND

2.0 Introduction

This chapter provides background information about the Canadian mining industry, the British Columbia mining industry, the Canadian Environmental Assessment Act, the NGOs involved and the work each organization does to increase public participation in environmental decision-making. This information serves to introduce the strengths and challenges faced by the mining industry, and the environmental assessment legislation that was in place during the assessment of Red Chris mine. This will provide context to changes to legislation in the wake of the Supreme Court of Canada decision regarding the ability of the public to participate in environmental assessment and ways NGO's responded to the changes.

2.1 The Canadian Mining Industry

This section will discuss the Canadian mining industry, contribution to GDP, the history of the Canadian mining industry, and challenges faced by the industry that increase conflict potential.

Mining is one of Canada's primary industries, with activities that involve the extraction, refining and processing of economically valuable rocks and minerals (Sandlos & Keeling, 2009). In 2010, the Canadian mining industry employed 300,000, or 2.1 percent of citizens, and contributed 36 billion, or 2.8% to Gross Domestic Product (GDP) (Natural Resources Canada).

Historically, mining in Canada began when Aboriginals used various minerals to produce and trade the tools necessary for their survival. Although the actual extent of Aboriginal mining is not known, trade in copper and silver and the use of chert implements are said to have been extensive in North America for over 5000 years before European settlement (Natural Resources Canada).

Mining entails the extraction of ore and can include quarrying or digging of sand, gravel or aggregate for construction (Sandlos & Keeling, 2009). Canadian mineral products include precious metals, diamonds, base metals, and energy materials such as coal, and uranium and industrial metals (Sandlos and Keeling). 'Mining' refers not only to the direct extraction of minerals but also to the complete cycle from exploration to discovery and mineral processing procedures (Sandlos & Keeling). Mineral exploration involves the identification of geological formations which can entail using maps in land evaluation and site assessment, remote imagery and aerial photographs, aeromagnetic surveys, the use of sophisticated remote sensing equipment, followed by computer analysis of data which is then presented in map formation (Sandlos & Keeling, 2009).

As high grades of ore that are easily accessible have declined, new technologies have been developed including the use of large machines to remove soil and vegetation by open cast mining, which have been controversial due to negative impacts to impacts land, soil, air and water (Hatch, 2013, p. 26; Sandlos and Keeling, 2009). High levels of water pollution are seen due to mechanical and chemical processes that are used in the extraction of ore which produce a waste stream known as 'tailings' (http://www.tailings.info/basics/tailings.htm). Tailings often contain heavy metals such as cadmium, arsenic, zinc, lead, which can leach into waterways and into the air, threatening human and animal health (Sandlos & Keeling). Contaminated water is considered the largest environmental risk facing the mining industry due to the severity of the impact on water quality, killing aquatic life, and making water virtually unusable (Hatch, 2013, p.16; Environmental Mining Council of BC, 2006).

Other environmental impacts are related to ore processing in smelters requiring high temperatures that produce elevated levels of toxic smokestack pollution, resulting in the creation

of toxic dust which poses additional waste disposal concerns (Sandlos & Keeling, 2009). The combination of greater demand for minerals with declining ore grades have resulted in increased volumes of waste rock and tailings, meaning that mining generates the largest waste stream of any industry (Sandlos & Keeling).

Other challenges faced by the industry include market volatility, electricity rates, and skilled labour shortage (PriceWaterHouseCoopers, 2013). A Fraser Institute report found that there were additional difficulties faced by the industry over the relationship between First Nations and government, compounded by the small number of finalized treaties and lack of clarity involving the Crown's "duty to consult", which deters investment in addition to unstable and unclear environmental regulations (Cervantes & McMahon, 2012-2013). Although mining was key in the settlement and development of Canada, in recent decades the industry has been criticized for its negative environmental and social impacts, and human rights impacts, both domestically and abroad (Saldlos & Keeling, 2009; Do, 2014).

Canada is an important player in the mining industry both domestically and abroad, with over 75 percent of the world's exploration and mining corporations headquartered in Canada, and interests in operations in more than 100 countries around the world (Foreign Affairs and International Trade Canada). Canada is attractive to international mining corporations for many reasons, such as the economic stability of the Canadian banking system, which is ranked as the world's soundest according to reports by the World Economic Forum and the IMF (Department of Finance Canada). Canada also attracts international corporations due to sophisticated financial markets in Toronto and Vancouver, which play host to the world's largest source of equity capital for mining companies undertaking exploration and development both domestically and abroad. In 2011, 90% of all mining equity financings were done on the Toronto Stock Exchange

and TSX Venture Exchange, with $483 billion in mining equity traded over the year (TSX, TSXV 2012). Since March 2011, the index has dropped 73%, and 80% from an all-time high in 2007 (Koven, 2014).

The top two gold mining companies in the world, Barrick Gold and Goldcorp, are headquartered in Canada and both rank in the top 17 of Canada's 1000 most profitable publicly traded corporations, measured by assets in 2012 (Globe and Mail "Ranking Canada's top 1000 public companies by profit**)**.

In addition to Canada's strength in mining finance, the international mining industry is drawn to Canada's concentration of expertise in mining law, as well as highly trained geologists, and engineers. Canada also provides a favorable regulatory, tax and legal environment for international corporations headquartered in Canada, with laws and regulations less rigorous than those of the U.S. and countries in the European Union in the monitoring of bribery, corruption and enforcement of human rights standards (Younglai, 2014).

Corruption is considered by the World Bank as the number one 'public enemy,' estimating that one trillion dollars is spent in bribes per year that then affects human and environmental rights (World Bank). This includes corruption related to mineral development and environmental degradation, such as damage to water systems with negative impacts on human and animal health, an ongoing problem related to the extraction industry, in operations both domestically and abroad (Wipond, 2013). Canada is rated on the Corruption Perceptions Index as being in the top 10 least corrupt countries in the world (Corruption Perception Index, 2011). However, in 2013, Canadian corporations ranked at the top of global corruption indexes, with 119 of the more than 250 entries of corrupt and fraudulent subsidiaries, according to a list of blacklisted organizations produced by the World Bank (Ligaya, 2013). A Montreal-based

company, SNC-Lavalin Group Inc., appeared 58 times as a Canadian subsidiary and 14 times as an American company, with more SNC subsidiaries involved located all over the world (Harress, 2013). It was found that there had been $56 million of improper payments made to undisclosed foreign agents (Harress).

Furthermore, a Fraser Institute report released in 2010/11 found that British Columbia was perceived by international miners as more corrupt than Botswana and Chile, with a significant number of international miners saying they were less likely to invest in mining operations in BC as a result (Cervantes & McMahon, 2011). In its 2013 survey, the Fraser Institute rated British Columbia 31st out of 96 international mining jurisdictions due to a perception of corruption with government making policies based on votes (Cervantes & McMahon, 2012-2013). Although miners in the study said that Canada and BC in general have a large potential for top ratings for mineral exploration; corruption and politics were described as a major deterrent to investing in BC (Cervantes & McMahon).

A human rights approach in combating corruption focuses particularly on empowering those that are exposed to particular risks, such as vulnerable and disadvantaged groups facing difficulty taking part in decision-making processes (International Council on Human Rights Policy, 2009). Instead of using corrupt practices to push through mines in communities opposed to mining development, mining corporations are increasingly encouraged to provide accountability and use sustainable, responsible business platforms in creating a social license to operate in communities where resource development is proposed as a means of conflict reduction or prevention (Haywood & Taylor, PWC Forensic Services, 2012). Ernst & Young identified community opposition, or lack of ‘social license’, as a top risk facing mining companies in 2013-2014 (Ernst & Young, 2013 - 2014).

NGOs have long urged government and industry to avoid long term, costly, intractable conflict and prevent human rights abuses by gaining the social license to operate by building relationships with a community early, honestly, and meaningfully, using transparent processes throughout the assessment, permitting and development process. If a community is in conflict over a project, the project can be stalled for years and add millions to the project, impacting all stakeholders, as demonstrated by the Red Chris mine case. Indeed, according to PWC Forensic Services (PWC Forensic Services, 2012), Ernst & Young (2013-2014) and a survey conducted by Cervantes & McMahon, mining corporations have found that when properly engaged and transparently managed from day one of exploration activities, these all-important relationships can be successfully initiated and constructively navigated, to the long-term benefit of both parties (p. 35).

2.2 British Columbia Mining Industry

The British Columbia mining industry is discussed in this section, including the industry's contributions to GDP, reasons why British Columbia is an attractive jurisdiction for mining, challenges faced by the industry, industry growth, and details of the Red Chris mine project.

In 2010, the mining industry and its direct suppliers provided 2% of BC's provincial GDP with direct employment, indirect and induced employment attributable to the mining industry estimated at 45,703 jobs, or 2% of BC's labor force (PWC for MABC, 2011).

British Columbia is internationally recognized for its expertise in mineral exploration and mine development due to geological potential, superior technological sophistication for accessing geoscience information, competitive taxes and infrastructure (Wilson, 2014). British

Columbia also boasts advanced transportation systems, and easy access to fast-growing Asia-Pacific markets (Fredericks, Grieve, Lefebure, Madu, Northcote, and Wojdak, 2009).

Challenges faced by the industry in British Columbia were described in a report released by the Fraser Institute as including no secure land tenure, unsettled First Nation land claims, problematic permit timelines, no consistency between issuing offices throughout the province, and uncertainty over land potentially being expropriated for parks/wildlife preserves (Cervantes & McMahon, 2011-2012, p. 41). Other challenges faced by the BC mining industry are described as depressed investment in the sector, weak commodities prices, high costs, and low confidence in the industry, making raising income for future growth difficult (PWC, 2013, p.6).

Mining companies are cutting costs to save cash, including the average salaries dropping from $98,200 in 2012 to $91,200 in 2013, although direct employment in the industry was shown to be up (PWC, 2013, p. 7). In 2013, there were 10, 720 directly employed by the mining industry in BC, up from 10,419 in 2012 (PWC).

Despite challenges, the mining industry has grown rapidly over the last decade in British Columbia. In 2003, British Columbia had five active mining operations (BCEAO). By 2012, this number had climbed to over 50 industrial mining operations, with another 50 mine proposals in the process of being reviewed, under review, or at the pre-application stage (MEM). One of the mines included in the 50 industrial mining operations under review was the Red Chris Mine.

Red Chris Mine, the case study examined, has been described as the largest new open pit copper and gold mine in North America. The mine includes extraction of 30,500 tons of ore per day, 100 million pounds of copper per year, with a milling operation, open pit mine and a mine life of 30 years (http://www.teda.ca/projects/mining/red-chris). In its first two decades of operation, Red Chris will generate 192 million tonnes of waste rock, of which 86 per cent will

require management as Potentially Acid Generating (PAG), another 51 million tonnes of low grade ore will be treated as PAG, and another 83 million tonnes of low-grade ore stockpiled during the first decade of operations, scheduled to be reclaimed and milled in years 11 through 18 (Davis, 2014). The toxic tailings will be deposited into a two and a half by three quarter mile pile, engulfing Black Lake, currently a fresh body of water (Mitchell, 2010). The estimated 408 million tonnes of waste rock will require treatment for acid mine drainage in perpetuity (Tahltan.org).

The community most affected by the project did not have information, did not participate and were not consulted about the project, which resulted in extended conflict between the provincial and federal government, industry and within the Tahltan Nation itself. The Tahltan Nation is made up of two Indian Bands: the Tahltan Band located in Telegraph Creek and the Iskut Band, located in Iskut, BC. Red Chris Mine is located 60km south of Telegraph Creek and 18km from Iskut (Mitchell, 2010).

2.3 Environmental Assessment Process – Legal Context

This section will describe the environmental assessment process and provide some context about laws involving public participation in the process. Both international and domestic law has mechanisms addressing the right to political participation in the context of the environment.

Internationally, The International Union for the Conservation of Nature and Natural Resources provides that: “States shall provide for and promote widespread participation by individuals and NGOs in all aspects of conserving the environment. In particular, States shall afford the opportunity to participate, individually, or with others, in the decision-making process (UN Article 10. 1991).”

Domestically, the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 (CEAA) passed by the Government of Canada in 1992 aims to protect the environment from significant adverse environmental effects. This includes making sure projects are considered and carried out in a careful and precautionary manner when a federal authority is exercising a power or performing a duty or function required for the project to proceed (S.C. 1992, c. 37). The Act was designed to promote cooperation and coordination between federal and provincial governments, and Aboriginal peoples, including opportunities for meaningful public participation. The purpose of the Act was to make sure environmental assessments were completed in a timely manner and that projects on federal lands or outside Canada that are carried out or financially supported by a federal authority would be carefully considered to ensure environmental protection and sustainable development (S.C. 1992, c. 37).

Sustainable development is calculated by assessing cumulative impacts of projects in a region through environmental assessments conducted by the Canadian Environmental Assessment Agency (the Agency). The Agency was established in 1994 to help relevant parties build consensus and resolve or avoid disputes as well as provide measures to promote and monitor industry compliance (Government of Canada).

Changes to the CEAA passed in 1992 were implemented in October 2003, after more than a decade of discussions between representatives from government, industry, First Nations and NGOs in an inclusive, bi-partisan process. Changes to the Act included a wide range of ways for the public to access information, and opportunities for public input into resource development procedures, such as the addition of section 21 of the Act, which dealt specifically with public participation during environmental assessments and included a participant funding program for

comprehensive, federal level environmental assessment studies. Section 21 (1) of the CEAA states:

> Where a project is described in the comprehensive study list, the responsible authority shall ensure public consultation with respect to the proposed scope of the project for the purposes of the environmental assessment, the factors proposed to be considered in its assessment, the proposed scope of those factors and the ability of the comprehensive study to address issues relating to the project (supra note 2).
>
> The environmental assessment process begins when a corporation, known as 'proponent', proposes a project. Following the project proposal, the 'scope' of the project is determined in a process that includes public involvement (S.C. 2003, c.9).

Scoping is a process whereby a proposed project or development is evaluated and is arguably the most important stage in environmental assessment; determining the level of environmental assessment by which the project will proceed (S.C. 2003, c. 9). Factors that determine the scope of a project include the size of the project, and the potential environmental, socio-economic, cultural and human health impacts (http://laws-lois.justice.gc.ca/eng/annualstatutes/2003_9/FullText.html). Scoping also determines if any Federal Ministries are 'triggered' by a project, such as Federal Fisheries or Natural Resources Canada. The goal during scoping is to determine whether a project is viable and to identify alternative solutions as a means to avoid, mitigate or compensate adverse impacts. This process allows the public to voice any concerns related to the project. The level of environmental assessment is dependent on the scope determination. According to the 2003 CEAA, there were four levels of assessment:

- Screening – the least rigorous level of assessment, for projects unlikely to cause significant environmental affects – 99% of projects are assessed at a screening level. No public participation is required and there is no mandatory follow up program
- Comprehensive federal assessment - large-scale or complex projects likely to have significant adverse environmental effects, such as oil or natural gas projects, or mining projects with production levels over 3000 tons per day. There is funding for public participation, public participation is mandatory and there is a mandatory follow up program
- Panel review - independent experts may be appointed by the Minister of the Environment if there is concern over significant adverse environmental effects, if there is doubt whether the risk of a project is justified in the circumstances, or if there is public concern. Public participation is mandatory, as is a follow up program (Office of the Auditor General, 2009)
- Mediator – the Minister of Environment can ask that a mediator be appointed during an assessment; however this has never been used (Auditor General, 2009).

2.4 Background Information: NGOs Involved in the Study

The NGOs examined in this study are MiningWatch Canada, Ecojustice, Fair Mining Collaborative and Skeena Watershed Conservation Coalition. The groups will be described according to their mandate, year of inception and the kind of work they do.

2.4.1 MiningWatch Canada

MiningWatch Canada (MWC) is a national non-profit group, established in 1999. They are a pan-Canadian initiative supported by environmental, social justice, aboriginal and labour organizations from across the country, created by founding members to address the need for a

coordinated public interest response to threats to public health, water and air quality, fish and wildlife habitat and community interests posed by mineral policies and practices in Canada and around the world. The group networks domestically and internationally, run a higher-frequency list covering Canadian news about mining and communities, contribute original research and put the research into action. They contribute to global news and provide commentary to international sites such as 'Mines and Communities'. They call for regulatory reform, hold the government to account 'in the court of public opinion' using the media. They assist communities to be heard, make presentations to parliamentary committees on issues such as corporate accountability, threats to lakes and rivers as a result of mining activity, development, trade agreements, and government subsidies. MWC also participate in roundtable meetings, file petitions and security complaints; they bring matters before Federal Court, engage in parliamentary hearings, parliamentary reviews and Senate hearings (Mining Watch Canada website).

MWC make presentations and submissions to the UN High Commissioner of Human Rights, call for domestic and international law creation and enforcement. They release articles, publications, videos, newsletters and blogs, issue press releases, release news reports, travel domestically and internationally. They work with other groups, exchange information, provide support to other groups, write letters, lobby, and challenge and inform government (Mining Watch Canada website).

2.4.2 Ecojustice

Ecojustice is a 100% donor funded organization, established in 1990 as Sierra Legal Defence Fund, changing the name to Ecojustice in 2007. They provide legal services free-of-charge to charities and citizens engaged on the front lines of the environmental movement. The group helps ensure equitable access to environmental justice nationwide, advocate for effective

laws and sustainable policy and have had landmark court victories. They use the courts to enhance human rights and environmental protection, and ensure laws are implemented. They push for changes to domestic law standards based on international human rights standards. They research, use outreach campaigns, hold workshops, work directly with communities, undertake investigations and release reports. They participate in parliamentary hearings and reviews, they lobby government, provide support to other NGOs, network and advocate on reform. They provide advice for governments at all levels – municipal, provincial, federal and international (Ecojustice website).

2.4.3 Fair Mining Collaborative Network

Fair Mining Collaborative Network (formally the Environmental Mining Council of British Columbia) was developed to increase knowledge and awareness, educate, work at the invitation of other NGOs or communities, and help with land planning decisions to help groups understand the mining project process, technical issues, land planning decisions. They work on an advisory basis, teach negotiation skills and are not 'pro or con' development and do not engage in advocacy work. They support and collaborate with other NGOs such as First Nations Women Advocating for Responsible Mining (FNWARM), MWC, Friends of the Stikine Society (FOSS), and Skeena Watershed Conservation Coalition. They also release publications and reports (Fair Mining Collaborative Network website).

2.4.4 Skeena Watershed Conservation Coalition

Skeena Watershed Conservation Coalition releases news reports, press releases, use multimedia, and organize events such as the Skeena Swim, 'Rafting the Skeena', tours. They work collaboratively with other NGOs, the government, they network, develop programs, such as 'WOW', 'Trapper's Paradise', and 'Up Your Watershed!' and educate creatively. They

produce reports such as ‘Mining’s Promise in Northwest BC,’ engage in story-telling, and have famous people advocate on behalf of the group. They sell merchandise such as music CD’s, T-Shirts, stickers, coffee, posters, books, videos, advertise winning awards and deliver public education programs utilizing a well-connected network of government, industry, NGO, First Nation and community service groups to deliver forward moving education and outreach products (Skeena Watershed Conservation Coalition website).

2.5 Conclusion

Strengths of the Canadian mining industry include high levels of expertise in mineral exploration, mine development, geological potential, as well as superior technological sophistication for accessing geoscience information. Canada also has highly trained experts in areas of law, securities, taxation, competitive taxes and infrastructure (Wilson, 2014).

British Columbia boasts advanced transportation systems, and easy access to fast-growing Asia-Pacific markets (Grant, Wojdak, deGrace, Madu, Grieve, Northcote & Lefebure, 2007-2008). British Columbia also provides tax incentives for business with mining firms enjoying a lower marginal rate for taxes and royalties than for non-resource companies, including generous corporate income tax and write-offs provided for certain expenditures such as exploration, development and processing mining assets (Personal communication with participant “B”, February 2014; Mintz and Chen, 2013, p. 1). British Columbia has a marginal effective tax rate (METRR) of -9.0 per cent, imposing the lowest effective tax rate on mining investment among the nine provinces (Personal communication February 2014 with participant “B”; Mintz and Chen, p. 7).

Challenges faced by the mining industry in British Columbia include no secure land tenure, unsettled First Nation land claims, problematic permit timelines, no consistency between

issuing offices throughout the province, and uncertainty over land potentially being expropriated for parks/wildlife preserves (Cervantes & McMahon, 2011-2012, p. 41). Other challenges are depressed investment in the sector, fluctuating commodities prices, high costs, and low confidence in the industry, making raising income for future growth difficult (PWC, 2013, p.6).

The Canadian Environmental Assessment process was explained to provide the legal context for the rest of the thesis. The NGOs involved in this study were introduced, including the kinds of work they do to increase public participation.

CHAPTER 3: LITERATURE REVIEW

3.0 Introduction

This chapter addresses scholarly material directly related to determining possible connections between levels of democracy, challenges to democracy, environmental degradation, and the role played by NGOs in increasing the depth of democracy so that human rights standards are met. Finally, the chapter details federal court cases leading up to Red Chris.

3.1 Conceptualizing Democracy

Democratic principles exist at the base of dispute resolution practices, with public participation essential in the creation of a transparent, open and just society to ensure the protection of all generations of human rights (Susskind & Cruikshank, 1987). Indeed, Przeworski (1991) suggests that a cynic or minimalist may view democracy as "only a system for processing conflicts without citizens killing one another" (p. 95).

Political theorists advance many different definitions on what constitutes democracy. Definitions and depths of democracy are expected to change in the future as in the past, with little reason to expect consensus on how, where, when and by whom democracy might be pursued (Przeworski, 1991, p. 95; Dryzek, 1999, p. 4; Albert, 2009, p. 3). Indeed, democracy is described by Little and Lloyd (2009, p. 205) as "a process of constant reinvention" and by Tilly (2007, p. 10), as an ongoing process of progress and reversal with the need for constant efforts to strengthen building blocks of open, trusting, accountable and non-coercive societies. As a result of the dynamic nature of democracy, democratization and de-democratization and their interdependence, there is always the risk of reversal.

Although free and fair elections and the ability of the adult public to participate in the voting process are often the primary conditions used to explain democracy, there are many other factors involved in what constitutes democracy, many of which do not mention the electoral process. Regarding the importance of elections as part of the democratic process, Samuel Huntington (1991) emphasizes that although elections,

> open, free and fair, are the essence of democracy, the inescapable sine qua non, governments produced by elections may be inefficient, corrupt, short-sighted, irresponsible, dominated by special interests, and incapable of adopting polices demanded by the public good. These qualities make such governments undesirable but do not make them undemocratic (p. 10).

Canadian-born constitutional law professor at Boston College Law School, Richard Albert (2009) agrees with Huntington and Hutchinson (2005, p. 61), that democracy is about more than elections -- it is a "profoundly rich and substantive concept that unfolds into itself with complementary notions of liberty, equality and opportunity. It defies conventional understanding of democracy as a process or procedure" (p. 3). Democracy requires active, involved participation on behalf of citizens in the search for social progress (Hutchinson, pp. 79-80). Barber (1984) sees democracy as a rare form of social organization that is, "fragile in its devotion to a difficult liberty, unsuited to much of the scale, complexity and the diversity that is modern mass society" (p. xvii).

Robert Dahl, described as the "dean of American political scientists," was a leading theorist of political pluralism. Andreas Schedler describes Dahl as having identified the most widely accepted criteria for identifying a country as democratic; including civic and political rights, fair, competitive and inclusive elections (1998 pp. 91-92; in Plattner & Diamond eds.

2001, pp. 149-150). Dahl described countries that met these criteria as "polyarchies" – or a system more widely recognized as "liberal democracies" (Schedler; Dahl, 1989, p. 233). Dahl expands on the main principles in this sort of political system as requiring, "the continuing responsiveness of the government to the preferences of its citizens, considered as political equals", with power equally dispersed and each individual's interests considered equally (1971, p.2). Dahl explained that polyarchal democracy should provide opportunities for effective participation, equality in voting, enlightened understanding, control by the people over the agenda, and inclusion of all adults implied by the first four criteria in the process (1989, p. 221; 1998, p. 37-38).

Democracy is said to derive its legitimacy by procedures allowing citizens to evaluate their choices and assess their adequacy through transparent, impartial processes with equal access and the ability to participate when considering their options (Albert, 2008, p. 6). This allows for open discussion and deliberation, the advancement of ideas, along with competing arguments (Mills, 1859). Once provided with information, the "jury of public opinion will deliver its verdict and pick the version of the truth it prefers" (Hargreaves, 2002, p. 302).

There are challenges to democracy, described by Barber (1984) as;

> it is easily overthrown – not from without, for democracies have rarely perished at the hand of armed aggressors or foreign armies or alien ideologies. That have eroded gradually from within, consumed unprotestingly by complacency in the guise of privatism, by arrogance in the guise of empire, by irresponsibility in the guise of individualism, by selfishness in the guise of obsessive rights, by passivity in the guise of deference to experts, by greed in the guise of productivity.

> Democracy is undone by a hundred kinds of activity more profitable than citizenship; by a thousand seductive acquisitions cheaper than liberty" (p. xvii).

Indeed, although democracy has flourished globally quantitatively, with the number of countries now considered democratic increasing drastically over the last century; qualitatively it is largely ignored by citizens in nations with long histories of democratic rule (Dahl, 1987; Chomsky, 1999). Many scholars agree that democracy has stagnated, losing ground since the early to mid-1990's (Carothers, 2004; Kaplan, 1997; West, 2004; Dahl). About the role and responsibility of the citizenry in ensuring the deepening of democracy, Dahl says "Democracy, it appears, is a bit chancy. But its chances also depend on what we do ourselves" (2000, p. 25).

The deterioration of democratic powers has been attributed to a trivialized concern for the public interest; the glorification of materialism which negatively impacts politics; aggressive militarism, and authoritarianism linked to increased fear following the attacks on 9/11, which has decreased privacy and silenced voices of dissent (West, 2004, p. 8, p. 178). Kaplan (1997) agrees, saying that "while we preach our vision of democracy abroad, it slips away from us at home", also citing increasingly powerful corporations and the decreasing relevance of governments (p. 72).

Transnational corporations and other elite institutions with unelected leaders also create challenges, with an increased role of interest groups in determining the outcome of political campaigns, followed by the same interest groups and 'elites' creating policy, legislation, and regulations that limit public participation in decision-making processes (Clark, 2002; Grant, 2003; Dahl, 1989; Chomsky, 1999; Klein, 2014). Furthermore, a crisis of governance is seen to exist when governments do not govern, but react to pressures of special interest groups, with those in governing roles unable to address disputes satisfactorily, particularly when the

government itself is a party to the dispute. When policies are created by and catering to industry - whose freedoms are protected by rules, arrived at in private, ratified by politicians behind closed doors, the procedure is perceived as corrupt and calls the governing regime into question (Dahl, 1971; Forester, 1999; Grant, 2003; Clark, 2002). On this subject, Barbara Falk (2008) concurs, "Where dissent is stifled, democracy suffers and its legitimacy is thereby diminished" (p. 249).

Corruption is said to co-exist alongside hierarchical decision-making processes, a lack of transparency, low levels of information released to the public, and a lack of accountability. Speculation of corruption is perceived when increased time is spent between industry officials, bureaucrats and politicians; when unelected corporate heads and interest groups have a tight grip on political parties, dictating law and policy, partisan practices, when the media is muzzled or controlled (Dahl, 1987; Susskind & Cruikshank, 1987; Grant, 2003; Forester, 1999; Clark, 2002; Chomsky, 1999; von Welhof, 2008; Klein, 2014). Timothy Cook (2005) goes far beyond in talking about the control of the media, stating that the press is not simply muzzled or controlled and not impartial, the news media are themselves political institutions, essential to the day-to-day operations of government (pp. 2-3). Noam Chomsky (2002) agrees, defining two models of democracy—one in which the public actively participates, and the other with a public that is purposefully manipulated and controlled, "propaganda is to democracy what the bludgeon is to a totalitarian state," with the mass media as the primary vehicle for delivering propaganda (p. 20).

3.1.1 Democratic Sub-categories

Sheldon Wolin said that democracy is too simple for complex societies and too complex for simple ones (Benhabib, 1996, p. 5). As a result, researchers have tried to analyze the proliferation of alternative conceptual formats to describe various sub-types of democracy, or "democracy with adjectives", leading to great conceptual confusion (Collier & Levitsky, 1997, p.

431). Collier and Levitsky studied different interpretations of democracy in an attempt to understand "semantic universe" of democracy with adjectives and found four broad categories of democratic regimes. These categories are: authoritarian regimes, electoral democracies, liberal democracies and advanced democracies (Schedler, 2001, pp. 151-152).

Like Collier and Levitsky, Dahl agrees that democratic process exists on a continuum with various hybrid types along the way, respectively consisting of increased levels of participation along the way, with no one form of democratic governance best for all occasions (Dahl, 1971, p. 2). "Direct Democracy", exists on the high end of a democratic process scale, allowing the public the ability to maintain meaningful degree of control over decisions; based on Athenian democracy, which is the Greek ideal, called "minipopulus" (1993; 1989, p. 342; 1970, pp. 140-53). "Minipopulus" styles of governance believes that all citizens are fit to serve in decision-making processes if all members are sufficiently well qualified if given access to the information they need to make informed decisions themselves. This way, citizens do not merely elect representatives to vote on their behalf, as they do in "Representative" democracy", rather, they vote on the design of political institutions, legislation and policies themselves (Dahl, 1989, p. 32; Albert, 2008, p. 13). Representative democracy is referred to by Dahl as "Delegated Authority", "the law of time and numbers: the more citizens a democratic unit contains, the less citizens can participate directly in government decisions and the more they must delegate authority to others" (Dahl, 1998, p. 109).

Representative democracy does not allow for as much individual decision-making power as "Participatory" democracy, a process which emphasizes the broad participation of citizens, creating opportunities for all members of a population to make meaningful contributions to decision-making. It seeks to increase the range of people who have access to take part in

decision-making processes and allows participants access to unbiased information from multiple sources in the direction and operation of political systems. The desired outcome is an increase in the scale of civic participation, translating the small groups involved into small world networks, collaborating using technology as a means of organizing (Shirky, 2008). Participatory democracy is also described as a process allowing a wide cross-section of perspectives, bringing together individuals who would not otherwise come together (Albert, 2008, p. 10; Dukes, 1993, pp. 48-49; Susskind & Cruikshank, 1987, pp. 239-243).

"Deliberative" democracy has been described as the most adequate conceptual and institutional model for democracy in complex societies by scholars such as Joshua Cohen, Iris Young, Jean Cohen, Amy Gutmann (Benhabib, 1996, p. 6-7). The deliberative model is a form of democracy which considers deliberation as an essential part of decision-making. It involves themes central to consensus decision-making involving higher levels of civic participation, increased dialogue, deliberation and argumentation in decision-making processes in order to revitalize democracy (Dryzek, 1990; Gutmann & Thompson, 1996).

Mutz (2006) found that although many conceptions of civil society and democratic theorists believe participatory and deliberative democracy blend together seamlessly, with the same goals, her research did not support this perspective. She found that it was not possible to promote political participation with participants who hold dissimilar views – that if those participating encounter opposing positions, they are less likely to be involved politically (Mutz, 2006, pp. 9-10). Mutz's research showed that political activists often belong to homogenous social networks that undermine what deliberative theorists believe essential in discursive democratic procedures (2006, pp. 9-10). She found that the best environment for cultivating

political activism was one in which likeminded people spur each other into collective action (2006, pp. 2-10).

3.1.2 Environmental Dispute Resolution

This thesis concerns environmental disputes that negatively impact human rights standards, with those most impacted, or those with 'expert' knowledge, left out of decision-making processes. With neo-liberal policies that demand deregulation and lax environmental standards, the number and intensity of environmental disputes/controversies are likely to grow, with domestic governments lacking the capacity to resolve these disputes in a timely, cost effective, efficient manner. Without change, entrenched conflict with human rights impacts will increase alongside environmental degradation and communities stressed and devastated financially, emotionally and physically.

Possible solutions include dispute resolution or conflict avoidance procedures that would be described as participatory or deliberative forms of democracy with direct, face-to-face discussions; with information exchanged as a means of enhancing participants' knowledge and education so that issues are understood prior to decision-making. Basic ground rules in negotiation processes recognize the importance of engaging respectfully and meaningfully with a community in order to understand underlying issues of oppression, victimization, trauma and suffering on behalf of those whose rights have historically been betrayed either individually or collectively (Forester, 1999; Susskind & Cruikshank, 2008; Habermas, 1984). A community's history, as well as their deeply rooted aspirations, needs, and interests must be understood prior to and during any negotiation, allowing the views and experiences of others to be heard. This builds solidarity, trust and creates a sense of safety in the community, by giving a voice to individuals and issues missed using traditional, top-down decision-making processes (Forester,

1999; Cruikshank, 2008). This way, it is possible to recognize political vulnerabilities, deliberate misinformation, deceit, and potential political abuses of power in any negotiation (Forester).

Those involved in decision-making roles represent separate and often conflicting perspectives, however, once consensus is reached, results of these processes tend to be long term, with higher levels of satisfaction by those involved, unifying communities with less cost than traditional, competitive top-down decision-making processes which often end in conflict and litigation, with one side winning and the other losing (Dukes, 1993; Susskind & Cruikshank, 1987; Grant, 2003).

Essential in these processes is the correct identification of "who" should be involved in decision-making processes – which is not always easy, but essential in achieving social license and avoiding conflict. Joseph Schumpeter (1942) argues that ordinary citizens should limit their participation in a democracy to electing leaders. Dahl (1990) describes 'who' should participate in decision-making as being relevant based on the situation: there is no 'one size fits all' in decision-making processes. Susskind (1995) suggests those who have a role in the implementation, those who can block the implementation, those who benefit and those who bear the cost. Susskind (2008) identifies one method of identifying stakeholders with a series of 'steps'. The first step involves asking those in positions of authority in a series of private interviews 'who' the stakeholders are, followed by a second set of interviews with those identified as stakeholders by the first group, asking them who they believe the stakeholders are. The third step is announcing the project publicly, and at that point, the third group identifies themselves (Susskind, 2008).

Benhabib (1996) wonders "are the people always wise? Are their decisions always just? Is the will that guides them always worthy of respect? (p. 8). Dahl (1985, p. 33) also questions

whether democratic institutions can cope with complex issues in the policy arena today. For example, decisions about nuclear weapons, industrial pollution are too complex for the average citizen, but if these decisions are routinely turned over to an elite of experts or guardians, there are questions that must be asked about those in decision-making roles (Dahl, 1985, p. 33; 2007, p. 94). Will they have the moral and other qualities necessary to serve the public interest in these circumstances; does this result in alienated power (Dahl, 2007, p. 94)? Dahl argues that allowing policy leaders and officials to make decisions in these instances is inconsistent with the principle of equality such that,

> the principle of guardianship…holds that only a small minority of citizens is sufficiently qualified and therefore capable of making binding decisions for the nation...then we have delegated authority. Instead we have alienated control over our lives to others. That is, for practical purposes, we simply lose control over crucial decisions and lose control over our lives (1985, p.33. Gould, 2003, p. 32).

If we alienate authority, we lose our freedom and the democratic process becomes hollow. Dahl's later work focused on increasing public participation, arguing that every citizen, armed with adequate knowledge, should be able to make informed decisions, believing that solutions could be found through the use of new communications technology to increase public knowledge, that resources and competence would increase citizen's understanding on complex issues. Gould (1988, chapter 11) expands on this in reference to democracy and the environment in terms of the need to be receptive to the situation of others and develop an understanding of the context of their lives, locally and transnationally with solidarity among people and groups, within and across borders, in order to grasp the impact of environmental crisis on people both at a distance and in future generations.

3.1.3 Environmental Participatory Rights

The debate on environmental participatory rights in environmental decision-making was triggered by the 1992 Rio Declaration on Environment and Development (Birnie & Boyle, 2002). Although it was not the first international policy document to address active participation of members of the public, Principle 10 of the Declaration made a significant impact on international environmental law and policy by recognizing that environmental issues are best handled with the participation of all concerned citizens, at the relevant level, giving substantial support to participatory rights. This includes the right to have access to appropriate information about the environment held by public authorities and the ability to have effective access to judicial and administrative proceedings, including redress and remedy.

Rio was followed in 1998, by the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters through the United Nations Economic Commission for Europe (UNECE), aiming to put into practice the concepts adopted through the Rio Declaration (Aarhus, Denmark. 25 June 1998). The Aarhus Convention linked environmental rights and human rights, ascertaining that sustainable development requires stakeholder involvement, and recognizing the links between transparency, accountability and environmental protection. Aarhus acknowledged that interactions between citizens and public authorities must be done in a democratic context, thereby creating a link between democratic process, the environment and the ability to participate (Aarhus, 1998; Birnie and Boyle, 2002). The Aarhus Convention links environmental rights and human rights and recognizes the need to plan for future generations. It ascertains that sustainable development requires stakeholder involvement, recognizes the link between accountability and environmental protection, and acknowledges the need for interactions between citizens and public authorities be done in a democratic context.

Historically, international human rights treaties, although well-articulated, have been difficult to enforce, with organizations like the United Nations, lacking the ability to make international treaties compulsory. The Rio +20 2012 Summit provided an opportunity for governments to transform Principle 10 from aspirational goals into actionable rights, although many influential world leaders did not attend, including the Canadian Prime Minister (Bowman, 2012). There continues to be great difficulty enforcing international and domestic human rights standards, a role taken up increasingly by environmental NGOs.

3.1.4 Democracy and the Environment

The relationship between levels of democracy and environmental degradation will be explored in this section. Kotor and Nikitina (1995) argue that information on environmental issues flow more easily and political rights are more numerous and better protected in a democracy than in an autocracy when elites censor information flows and information about environmental degradation may not be reported to the people. Democracies are more likely to comply with environmental agreements because they respect the "rule of law" which in turn increases environmental quality (Weiss & Jacobsen, 1999). Gleditsch & Sverdrup (2003) suggest that democracies respect human life more than autocracies and are more responsive to threats related to environmental degradation.

Early studies found that democratic forms of governance improve environmental quality (Congleton, 1992), with subsequent work largely confirming that view (Midlarsky, 1998; Barrett and Graddy, 2000). Studies also show that per capita income and environmental degradation are inverted (called the Environmental Kuznets Curve); however, the link between income and environmental quality is not automatic, but operates by public policy responses induced by popular support for greater environmental quality (Grossman & Krueger, 1995).

As far as measuring environmental health, the Environmental Performance Index (EPI) is a method of quantifying and numerically marking the environmental performance of a state's policies. The EPI compares how well countries perform on high-priority environmental issues. The Index is constructed based on the calculation and aggregation of 20 indicators reflecting state-level environmental data with the indicators then combined into nine categories (http://epi.yale.edu/epi). These categories each fit under one of two EPI profiles: environmental health and ecosystem vitality (http://epi.yale.edu/epi). In 2014, Canada ranked 24/178 countries with a score of 73.14 out of 100. Canada scores well in the health impact (100), air quality (97.85) and air and sanitation (95.90), and water resources (80.42) (http://epi.yale.edu/epi). However, not scoring well were fisheries (21.54) and forests (16.64) (http://epi.yale.edu/epi).

In 2001, a pioneering evaluation on Canada's progress in achieving environmental sustainability found Canada at 28/29, one of the worst in developed countries (Boyd, 2003). Follow-up studies at Simon Fraser University used 28 indicators to assess performance in 2005 found Canada's environmental performance at 28/30 (Gunton et al, 2005) and 24/25 in 2010 (Ellis, Gunton & Rutherford, 2010). The 2010 report also analyzed the reasons for Canada's poor environmental performance, finding that Canada's poor record is not due to natural factors such as climate and geography, but rather, a result of environmental policies. The report found that if Canadian environmental policies were comparable to the top three OECD countries, Canada's environmental rank would move from 24th to 1st in the OECD (Gunton & Calbick, p. 6).Since most modern environmental problems emerge as a negative, democracy could be seen as providing an effective social feedback mechanism when electoral politics function without impediment - more responsive to the environmental desires of the public due to electoral accountability (Kotov & Nikitina, 1995). Democracies that hold regular and free elections can

bring to power new parties including those more friendly to the environment when citizens are unhappy with environmental policy.

However, between elections, democracy can be impeded if those in governing roles shut down the ability of citizens to participate in policy issues. A healthy democracy requires wide latitude in the inclusion of those taking part in policy discussion and formation. Recent studies have found Canada's democratic process as being corrupted by governmental bodies, in particular with regard to civil-society organizations whose public policy ideas differ from governmental priorities (Kirkby, 2014, p. 3). Research has found that opportunities for NGOs who have been critical of governmental policy have been cut off of participating in policy discussions, with the federal government attempting to "muffle" or "silence" charities that had previously been an important part of public debate involving areas of social justice, described as an indicator of constrained democracy, with the government having politicized the state regulatory system (Phillips, 2013, p. 884, 896; Kirkby, 2014, p. 13). The loss of funding after speaking out against governmental policies has created an extensive advocacy chill, with impacts on associational linkages, causing "rifts between organizations that still get funding fearing to speak out in support of those who have been cut off" (LaForest, 2012, p. 190).

In 2012, the Canada Revenue Agency (CRA) began pursuing specific charitable sectors in extensive audits, the main targets, environmental groups, with more than 50 audits conducted since 2012 related to "charitable status" (Kirkpatrick, 2014). Charitable status is vital for NGOs competing for very limited funding. Phillips (2013) found the motivation for increased CRA audits on environmental groups being conducted by the political executive is due to displeasure over advocacy activities by certain organizations (2013, p. 896). The result presents a

“significant danger to a credible regulatory process with new requirements not only a diversion but also make Canada an anomaly compared to other countries” (2013, p. 896).

For a variety of reasons, NGOs are said to be consciously choosing to keep a low media profile on issues that they normally would have directed public attention toward (Kirkby, 2014, pp. 8-11; LaForest, 2012, p. 181; LaForest, 2011, p. 130; Phillips 2013, p. 900), which could be seen as showing constraining democracy in Canada under the current governing regime.

Participants interviewed in this study also remarked that democracy is under threat in this country and NGOs are being shut out of participating and are increasingly careful about communications (Participant “B”, February 21, 2014; Participant “D”, August 2012).

Without the ability of the civil society sector to participate in democratic debate, new and innovative solutions for changing social needs will be stifled, with private corporations having virtually unlimited access to funds to advertise their projects as being in the public interest, with a great deal of freedom to promote their viewpoint on issues affecting them.

3.2 Non-Governmental Organizations

The chair of the UDHR Drafting Committee, Eleanor Roosevelt, correctly predicted that it would be a “curious grapevine” that would penetrate closed societies (Korey, 1998. p. 9), transmitting the messages of human rights abuses and word of the UDHR around the world that "may seep in even when governments are not so anxious for it" (p. 48). Roosevelt was correct in that networks consisting of NGOs, have strikingly transformed global politics in a relatively brief span of time.

The term "non-governmental organization" was first used in 1945, when the United Nations (UN) was created (Davies, 2014, p. 3). Non-Governmental Organizations are made up voluntarily by citizens with shared interests, independent of the state; they can be profit or non-

profit-making organizations, whose main aim is to promote or defend an interest (UN). NGOs provide aid, solidarity; and respond to political oppression (Welch, 2001, p. 258). They may perform humanitarian work, provide support for stakeholders, challenge or inform government in the design, implementation and monitoring of policy. They can be research driven, provide analysis and advocacy in legal, social, economic fields, and/or exchange information and technical assistance (UN). In accordance with Article 71 of the UN Charter, Non-Governmental Organizations have consultative status with the United Nations Economic and Social Council, each with a different relationship in the UN system, depending on their location and mandate (United Nations Rule of Law).

Winston notes that NGOs, initially focused on research, moved in the direction of promotion strategies and increasingly are moving towards advocacy work, broadening their work to include areas traditionally fulfilled by government; in fact they can outperform government when adequately funded (Winston in Welch, 2001, p. 27). The author also found that they are quicker to respond to new demands and opportunities and can carry out many public service tasks and are better than government at dealing with problems that accumulate slowly and impact individuals in areas of "soft threat", including environmental degradation, human rights infractions, population growth and lack of development, all of which have the potential of causing more death than overt acts of aggression (Winston, p. 27).

Groups of NGOs work together in increasing public knowledge, greatly increasing the impact of individual NGOs, by allowing them to broaden their scope, and grow their audience (Welch, 2001, p. 268). Networking is a basic strategy for human rights NGOs – those not participating face being marginalized (Welch, p. 268). Operating together provides legitimacy, increases publicity, efficacy and avoids individual NGOs from being marginalized (Welch, p.

268). Studies have found factors that influence NGO performance, including the involvement of beneficiaries, competent staff, experiential knowledge, ability to network, ability to stay small and mobile, research, adequate funding, and sufficient time to achieve objectives (Welch, p. 68).

Canada's non-profit and charitable industry is the second highest nonprofit and voluntary sector in the world; with more than 165,000 organizations, employing 2,000,000 people in areas ranging from healthcare to sports, the arts, social services, education, international development and the environment (Imagine Canada). All Canadian non-profits and charitable organizations represent $106 billion or 8.1% of the Canadian GDP. This provides more value added than the entire retail trade industry and outpaces that of the mining, oil and gas extraction industry. (http://www.imaginecanada.ca/node/32. Satellite Account of Non-profit Institutions and Volunteering. 2007. Statistics Canada). In 2010, there were 1,155 environmental charities registered with the Canada Revenue Agency with a total revenue of 959 million (Grandy, 2013), which had grown to 1400 by 2011 (imaginecanada). NGO funding sources may include sale of goods, government funding, membership fees, donations from households, and investment income. It is felt that the true impact of NGOs has been greatly under-represented in the policy arena and as a result, in February 2013, Imagine Canada announced the first-ever chief economist for the charitable and non-profit sector, tasked with measuring the impact of advocacy work NGOs accomplish in lowering conflict potential, and contributing to GDP in areas of the social economy and social justice, such as in the environmental arena. This includes environmental participatory rights as demonstrated in the next section, 'Cases Prior to Red Chris Mine'.

3.3 Cases Prior to Red Chris Mine

A number of Federal Court cases led up to Red Chris, with NGOs pursuing environmental rights judicially. The Friends of the Oldman River case in 1992 held that environmental impact assessments are planning tools that include both information gathering and decision-making that are essential to regulatory bodies in ensuring a balance between the public interest and that of industry seeking to develop the resource (Friends of the Oldman River Society v. Canada (Minister of Transport), [1992] 1 S.C.R. 3. Janusz, 2014).

In 1987, the Province of Alberta applied to construct a dam on the Oldman River and received approval from Transport Canada under section 5 of the Navigable Waters Protection Act. The Minister had considered the project's effect solely on navigation and no assessment under the *Environmental Assessment and Review Process Guidelines Order* (EARP) was made regarding the environmental impacts of the proposed dam. Attempts to stop the project in the Alberta courts failed and both the federal Ministers of the Environment and Department of Fisheries and Oceans declined requests to subject the project to the EARP Guidelines Order and a contract for the construction of the dam was awarded in 1988. The project was 40 per cent complete on the dam when action was commenced in the Federal Court in April 1989. The Trial Division dismissed the applications. On appeal, the judgment was reversed, the approval quashed under s. 5 of the *Navigable Waters Protection Act*. The Ministers of Transport and of Fisheries and Oceans were ordered to comply with the EARP Guidelines Order, which raised the constitutional and statutory validity of the Guidelines Order as well as its nature and applicability. The question of whether the motions judge had properly exercised his discretion in not granting the remedy sought on grounds of unreasonable delay and futility was also raised.

Following the decision, the EARP recommended that the structure be decommissioned, because the economic benefits of the project were outweighed by the environmental, social and economic costs of the project:

> There is no such thing as a 'provincial environment' or a 'federal environment' - there is, after all, just one environment. All impacts on the environment must be matters of relevance to both federal and provincial decision makers. Each must consider the full effects of industrial projects, when making decisions within their respective legislative spheres. (Friends of the Oldman River Society v. Canada (Minister of Transport), [1992] 1 S.C.R. 3, supra, at pp. 63(g)-64, 66 [c-h]).

The appeal raised the constitutional and statutory validity of the Guidelines Order as well as its nature and applicability, which led to the implementation of the Canadian Environmental Assessment Act of 1996. Subsequently, decisions of the Federal Court of Appeal in Prairie Acid Rain Coalition v. Canada (Minister of Fisheries and Oceans), 2006 FCA 31, [2006] 3 F.C.R. 610 (“TrueNorth”) and Friends of the West Country Assn. v. Canada (Minister of Fisheries and Oceans), [2000] 2 F.C. 263 (“Sunpine”) determined that federal “responsible authorities” under CEAA, such as Fisheries and Oceans or Transport Canada, had discretion to limit environmental assessments to those aspects of a project that were within federal jurisdiction.

These decisions appeared to contradict the approach of the Supreme Court of Canada in Friends of the Oldman River v. Canada (Minister of Transport) ([1992] 1 S.C.R. 3) which held that environmental assessment of entire projects was constitutionally valid so long as there was a trigger that was within federal jurisdiction.

3.4 Conclusion

As shown through the literature review, public participation is a cornerstone of democratic ideals and, increasingly, it is seen as a practical means of putting decisions into effect and preventing conflict. There are many descriptions for what democracy is and there are categories of sub-sets describing different kinds and levels of democracy and processes unique to each.

Environmental dispute resolution is a process of negotiation whereby stakeholders involved in the dispute are each able to reach a mutually satisfying agreement which takes the values and opinions of all concerned into consideration. Tools used in the process include conflict assessment, facilitation, mediation, consensus building. This process is a more collaborative method compared to more traditional, hierarchical, and more adversarial forms of decision-making. When the public is not included in the decision-making processes and their thoughts, concerns and ideas are not taken into consideration, the 'solutions' arrived at by the power elite do not tend to last and continue to be contentious as evidenced in cases such as the Red Chris mine.

NGOs are assisting in increasing democratic process with the intent of having a much wider cross section of stakeholders involved in deciding how to solve or avoid conflict. NGOs have become increasingly important in collecting and disseminating critical information, advising communities of procedures available to them, how to complain, and complaining themselves publicly about the weaknesses inherent in state agencies as well as pursuing legal cases before regional and national courts. The tactics and strategies used by NGOs to enforce participatory rights are constantly evolving, and appear to be somewhat dependent on the

political economy of the time, although more research would need to be conducted to explore this.

CHAPTER 4: METHODOLOGY AND METHODS

This chapter outlines the methodology, methods and data sources, data analysis and the limitations and delimitations of the approach and methods.

4.0 Research Methodology

The goal of this research was to use the voices of the participants to establish factors contributing to the dispute over Red Chris mine, what NGOs did to increase public participation and enforce human rights, how they strategized and communicated, how this activated the citizenry and what the results of various strategies and methods were. The investigation was done from the transformative approach, which means using the perspective of those trying to create change to the current system, rather than from an elite perspective. The goal of a transformative approach is to create change by empowering those who lack power in decision-making processes (Feagin, Orum, & Sjoberg, 1991). Frank Dukes (1993) states that transformative approaches address problems related to modernity, such as;

> ...disintegration of community, public alienation from governmental institutions and an inability to resolve public problems and conflicts…encouraging individuals to transcend narrow self-interest…fostering commitment to common goals and to relationships with each other. It encourages inclusion and participation by creating dialogues in which people are empowered to express their needs and explore their differences (p. 47).

The aim of this research was to investigate the ways that NGOs have operated in an effort to engage the citizenry such that horizontal, collaborative decision-making processes eventually become the norm rather than the exception (Breuskin, 2012, introduction). This research focused initially on questioning the participants who had been entrenched in the process of the conflict

about their views and experiences prior, during and after the Supreme Court of Canada case. Their answers were later supported through triangulation of data sources in order to minimize bias.

A case study method of inquiry was chosen due to the conditions propelling the research direction, such as the research question, the degree to which the researcher had control over actions and the study focused mainly on contemporary events (Yin, 2012, p. 5). Case study methodology is said to be ideal when a holistic, in depth understanding is needed involving a broad array of issues as it allows for details to emerge from multiple sources of evidence, as needed for this study (Yin. Tellis, 1997; Feagin, Orum & Sjoberg, 1991). Case studies are well suited to research questions that require a detailed understanding of complex social interactions and processes within their context, also necessary in this research (Yin; Tellis).

This study's research question is "what is the impact of NGOs on participatory politics specific as seen in the SCC decision, MiningWatch Canada v. Canada"? Other research questions examined in this thesis are: "what role have NGOs had in increasing participation in environmental decision-making", and: "how do NGOs increase public participation in environmental decision-making?" Given the main defining concepts of the case study approach, the research focused on contemporary phenomenon set within its real-world context; the boundary between the phenomenon and context was unclear; the researcher had no control over events. A holistic, in-depth understanding was needed, with content involving complex social interactions and processes involving a broad array of issues. Multiple sources of evidence allowed by a case study approach, followed by triangulation during data analysis provided methodological rigor.

The study investigated a variety of NGOs, including Ecojustice, MiningWatch Canada, Fair Mining Collaborative and Skeena Watershed Conservation Coalition; their strategies or actions and the affect groups of strategies had on increasing levels of public participation in environmental decision-making as seen prior to, during and in the aftermath of Red Chris. This was done by investigating events, the actions of the community most impacted by the development and actions on behalf of NGOs leading up to, during and following the Supreme Court decision as units of analysis.

4.1 Methods and Data Sources

A mixed methods approach was used in this study to ensure findings were supported by more than one source. Methods included reviewing documents, conducting archival research, and interviewing 9 people to understand processes emerging over time so that detailed information could be collected about the setting and context, allowing the voices of participants to be heard using specific quotes (Creswell, Klassen, Clark & Clegg Smith, 2011).

4.2 Document Review and Analysis

It was initially expected that the main source of evidence would be an environmental scan and interviews; however, as research progressed, secondary sources of evidence were accessible that I had not expected, providing a much deeper, richer level of investigation. Participants informed me where to find other sources of evidence, including archival records, government data, such as the British Columbia Environmental Assessment Office (BCEAO) website, which has public records of the British Columbia Environmental Assessment (BCEA) process for Red Chris Mine. This included initial letters between the proponent, the provincial and federal governments, as well as the Tahltan Central Council, letters from the public and Non-

Governmental Organizations submitted during the BCEA comment period. This website was invaluable in what was offered about the Red Chris approval process, and also proved helpful in identifying potential study participants.

4.2.1 Data Analysis: Timeline to Cross-Reference Actions and Outcomes in Documents

During the initial document analysis, a timeline (see Appendix A) was developed as a means to cross-reference actions and outcomes. The timeline was the backbone of evidence gathering, with information cross-checked iteratively between data sources, including interviews, court documents, government websites and articles analyzing the case. The timeline was in a tabular format, split into sections identifying the date, the group involved in a particular action, what the action was and the citation of each source. Groups were color coded based on the kind of organization they represented; with industry groups, government groups, NGOs having their own colors on the table. Actions and their impacts were noted on the timeline.

Initially, the timeline began with the Supreme Court of Canada decision in 2010 and grew from there as interviews proceeded. As data was collected, patterns began to emerge that defined and refined the frequency of certain kinds of activities and reactions on behalf of governmental bodies, industry and NGOs. The timeline ensured the accuracy of times, dates, interactions and were supported through triangulation of data. When complete, it was 76 pages in length.

As patterns began to emerge on the timeline about the strategies and their impact, more tables were created with NGOs, governmental bodies, and the proponent each having their own colour and the impact noted in another column. Patterns identifying the strategies emerged from both the interviews and document analysis. Once categories of strategies began to emerge, they were grouped into a separate tabular format, with each strategy was assigned a colour. Tabular

formats were also used to define and refine the frequency of tactics and the nature of the interactions between Non-Governmental Organization, government, industry, as well as between organizations.

As research commenced, strategies could loosely be grouped into those that were of a 'structured' nature or ones that were more 'emotional'. From there, groups of strategies were broken down, often using terms as voiced by participants. Some effects were felt immediately and others occurred over a longer term. A table was constructed that showed categories of strategies used by various organizations and their impact on public participation (See Appendix B).

Correspondence regarding the initial concerns about the project on behalf of provincial and federal governments, the Tahltan Central Council (TCC), the public and those noted in the interviews were common to all. A table was created that showed the reasons for the conflict as identified through data analysis; including issues identified by participants, public comments found on the British Columbia Environmental Assessment Office (BCEAO) website made during the British Columbia Environmental Assessment (BCEA), court documents, academic articles; journal and newspaper articles.

4.2.2 Interviews

After ethics approval was received (see Appendix C), an email was sent to those identified in my thesis proposal as being potential participants. The email identified who I am, the subject of my research and what would be required of them as participants in the study. Potential participants were also provided with a consent form (see Appendix D).

Participants were selected through non-random purposeful sampling, using publicly available records or referred by other participants. Interviewees were selected based on their

academic knowledge of the case, direct involvement with the Red Chris Mine Supreme Court case, experience working in environmental dispute resolution or working for civil society groups. In total, nine participants were interviewed, and three of these were interviewed multiple times in order to ensure accuracy, provide clarity and served to show the devolution of democratic process in Canada over the last several years. One participant was interviewed via email. All of those interviewed were what Yin describes as 'elite' interviews – people of high stature within their field, filling a unique role with the ability to provide distinct insights and information covering issues not available through other sources of evidence (Yin, 2012, p. 56).

Of the five possible participants identified as potential interviewees in the thesis proposal, two agreed to be interviewed, both of whom were directly involved with the Supreme Court of Canada case. In all, four participants were involved directly with the MWC Supreme Court case. Other participants had extensive knowledge of the area, the people involved in the conflict or had broad knowledge about environmental assessment in Canada and participatory rights both domestically and internationally. One participant was formerly the president of West Coast Environmental Law Association, with extensive experience and knowledge of environmental dispute resolution, democratic process and has deep involvement with Canadian politics. Four participants were found on the British Columbia Environmental Assessment Office website, having commented on the EA for Red Chris mine on behalf of their NGOs or working for an NGO that had commented on the BCEA process. Six participants have worked directly with First Nations groups in the area for many years, three having lived in the region for decades, one of whom has familial roots going back 5 generations.

Five interviewees had a great deal of knowledge about the evolution of environmental participatory rights, having taken part in parliamentary hearings, parliamentary reviews, senate

hearings, participating in meetings on changes to CEAA prior to 2003. Participants had experience advocating on federal reforms, had extensive knowledge and experience with Canadian politics and all participants have experience working directly with communities at a grass roots level.

Interviews were recorded on mechanical devices, such as audio recorder, or taped directly onto the computer. One participant was contacted via email a number of times. Hard copies of the questions were printed prior to the interviews and notes were taken during the interviews. Interview questions can be found in Appendixes E, F and G. During the thematic analysis, interviews were transcribed into text and printed, replayed a number of times and recoded, allowing more data to emerge, such as common words, voice inflection, with trends and quotes noted, and grouped into similar categories. This included descriptions of 'who' should be involved during decision-making processes, what had gone wrong, what could be done better to avoid conflict in a similar situation. Transcribed interviews were sent to interviewees to check for validity. Interviewees responded very quickly with their feedback. Table 1 shows a list of those contacted, who responded and agreed to be interviewed, and the dates they were interviewed.

Table 1: List of Organizations Contacted

List of Organizations Contacted	Number Contacted	Heard Back	Interviewed
Law Professors	5	1	1
Ecojustice	2	2	2
MWC	2	2	2
Cassiar Watch	1	Heard back, did not consent	0
Skeena Watershed Conservation Coalition	2	2	2
International League of Conservation Photographers	1	Gave permission to use copyrighted images taken during Rapid Assessment Visual Expedition on April 17, 2015	0
Lawyer, Klabona Keepers	1	1 consented with Klabona Keeper's permission, but was unable to get signed consent form. Ethics prevented me from contacting First Nations groups directly	0
CPS2, EMCBC, Environmental Mining Education Foundation, now Fair Mining Collaborative	2	2	2
Dogwood Initiative	2	0	0

Table 2 will identify participants by alphabetical letters as a means of ensuring their anonymity. Interviews included phone calls, in person and email communications.

Table 2: Participants and Interview Dates

Participant	Interview Date(s)
A	June 29, 2012 December, 2013
B	July, 19, 2012 November 11, 2013 February 2, 2014 February 21, 2014 February 21, 2014
C	July, 2012 December 15, 2013
D	August 21, 2012 November 18, 2013

E	October 26, 2012 October 27, 2012 February 2, 2013 April 23, 2013 November 19, 2013 December 1, 2013
F	October 30, 2012
G	February 1, 2013
H	August 12, 2013 November 14, 2013 April 24, 2014 April 24, 2014
I	October 17, 2012 November 29, 2012 December 17, 2013 December 22, 2013 February 17, 2014 April 15, 2015

4.3 Limitations and Delimitations of Methodology and Methods

This section outlines the strengths and weaknesses of the methodology and methods used in this study.

4.3.1 Limitations

Case study approaches allow for a great cross section of data through the use of mixed methods in data collection, although it produces an enormous amount of data that can be overwhelming and time consuming to disseminate, which was a factor in this study (Yin, 2013, pp. 127-129).

Difficulties in this study also arose in finding neutral numerical statistics, due to the manner in which statistics were presented, the terminology, origin of information and motive behind the source, including government, industry and NGO sources. The information is often presented by government and industry in ‘billions’ of dollars attributable to sectors of the economy which can be deceiving as it is not generally shown what other sectors contribute in

comparison, and ‘sustainable’, natural resource development is an extremely complicated policy arena. In a 2014 Mining Association of Canada report, the mining industry claims to employ 383,000 people, whereas Statistics Canada reports 65,540 as being employed in the mining industry in 2014.

Elite interviews produce expert information not available through other sources of information, which provided challenges related to the amount of data to disseminate as a result of the wealth of knowledge and experience of each participant and their generosity in terms of time and help with the project. These kinds of interviews can and did produce concerns over ensuring participant confidentiality and the potential impact on the participant or the organization. This was something that became increasingly a concern as this research progressed. Changes to environmental laws and policy, privacy bills, CRA audits occurring during the course of this study were such that as a researcher, I became more and more concerned about the anonymity of my participants. Initially participants were identified by ‘nicknames’ they chose for themselves that were interesting and somewhat reflective of the organization they worked for. However as research progressed and privacy concerns escalated, those interviewed were given alphabetic characters instead.

Other challenges with this kind of research is that with ‘elite’ participants, a researcher may be reluctant to bother the participants to ask more questions in order to ensure correct interpretation. This was something I was aware of with the participants in this study, not wanting to bother them, or feeling ‘stupid’ asking a question.

4.3.2 Delimitations

Case study approaches allow for a great deal of information from a variety of perspectives, sources and methods; both quantitative and qualitative in nature, accessible in a

highly iterative manner. This approach is practical in that it allows all methods possible to address a research problem. Mixed methods also allow for information to emerge from a variety of sources. Elite interviews provided information that would not have been otherwise available, including documents, archives and introductions to other potential interviewees. All participants were helpful in ensuring I understood terminology, timing and events properly.

When I began the study, I had read a few articles on the Red Chris mine court case and the changes immediately after the decision to the CEAA 2003, with the removal of Section 21. The articles I read in mainstream media described the changes as a good thing, seeming to only apply to very small projects that were being held up due to an overly cautious regulatory process that required detailed public input.

I had not understood the underlying reasons for the public's inability to comment on the Red Chris mine project. I had had no idea of the size of the mine and the potential environmental degradation and socio-economic impacts. I had had no idea that a fresh water lake had been reclassified as a tailings impoundment area and the mill and the mine had been removed from the project. I had no idea that any of these things could be legal. In fact, when I interviewed my first participant and was told that Black Lake had been classified as a Tailings Impoundment Area, I laughed out loud. Literally. I thought the idea was ludicrous. Next I was told that the mine and mill had been split from the assessment, again I was astonished. As a result of the project having been split into pieces, Red Chris was assessed at the lowest level of assessment, without any public participation as mandated in CEAA 2003. It took several interviews and a lot of document analysis to begin to understand the implications of the changes to law, policy and regulatory procedure since 2006 that severely impact the ability of the public to participate in matters involving the environment.

CHAPTER 5: FINDINGS: INTERVIEW RESULTS – CONFLICT ANALYSIS

5.0 Introduction

Chapter 5 describes how participants found out about the Red Chris conflict, what they did when they found out, what they felt lay at the heart of the conflict and how the conflict might have been averted. The opinions of the participants on the impact of the media on the case will also be discussed.

This chapter will also describe the responses given by participants on the effect of the federal government's streamlining of environmental assessments on public participation. This final section will describe the responses in relation to any effects related to changes to legislation on sources of foreign funding for NGOs, and the federal government's desire to eliminate the charitable status of NGO's concerned with environmental matters.

5.1 Question 1: Awareness of Case

How did you become aware of the case?

Participants all became aware of the case either through the work they do for an NGO or through networking with those involved with the Tahltan community. For example, Fair Mining Collaborative were informed by the Iskut community about the conflict and then asked by the community to provide them with information about the project and their options. MiningWatch Canada were alerted by networking with other NGOs and one of the lawyers found out about the project initially through the Canadian Environmental Assessment Registry and then by MiningWatch Canada. Skeena Watershed Conservation Coalition are located in the region of the proposed Red Chris mine and were aware of this issue immediately.

5.2 Question 2: Avoiding the Case

What could have avoided or prevented this case from being caught up in litigation and prolonged dispute?

Numerous reasons were identified by participants as having caused the Red Chris conflict. All participants involved in the case said that the conflict could have been averted if the law had been followed, including the implementation of a comprehensive federal environmental assessment. The majority of participants remarked on common barriers to participation existing, which lay at the root of the conflict. These barriers included a lack of information, leadership issues and changes to election rules, lack of transparency, inadequate consultation and insufficient member control, history, split communities, an Indian Act that imposes white settler form of government and regulatory discretion.

Participants were unanimous in remarking that in order to engage in a process, you have to know it exists with one participant explaining; "access to information is key – if you don't have access to timely information about a project, your participation is at a rhetorical level – if you want to take part in an environmental assessment, you have to know it exists" (G). Those most directly impacted by Red Chris had no information about the project and had not been included meaningfully in the decision-making process (All). It was also mentioned that, "The company must come in before and train people" (H). Another participant noted that,

> The government has been very careful to say they are allowing participation but there is really nothing to participate in, particularly with the time limits and especially on reserves, the process is not conducive to residents even knowing about upcoming projects...communities are overwhelmed with too many projects evaluated at the same time - incredibly overwhelming for the community (D).

Other barriers to participation noted by the participants included leadership issues and far too many projects going through the assessment process simultaneously to keep up with due to a lack of resources, both human and financial in order to effectively participate in the process. A lack of transparency was mentioned by all participants as lying at the core of the conflict, which led to perceptions of corruption on behalf of those most affected by the project.

The majority of those interviewed commented on other barriers to participation that included living on remote reserves, language barriers, and extremely short comment periods, in that there was limited opportunity for those not in governing roles to find out about resource development proposals. Other barriers mentioned included extreme levels of poverty, difficulty accessing justice due to communities not recognizing western forms of governance as well as lack of funding for court processes (F, E, D, H).

On that note, one participant mentioned that, "Comment periods are only 30 days, with no process for reflecting and deliberating on public input – there is no interest in meeting and explaining different projects, with the result that those projects are not going to have a social license – they may be approved but they won't be supported – the decision will be divisive" (G). Participants mentioned that the residents most affected by Red Chris first learned of the project after seeing flaggers on their traditional territories or at meetings after the project had already been approved (E, F). When the community most impacted learned that money had exchanged hands between those in governing roles, industry and the provincial government concerning potential projects, the conflict erupted (B, E, F). Those most affected had not been included in the decision-making process, were provided no clear benefit, with lots of obvious negatives, there had been a lack of transparency and suspicion of corruption (B, E, F).

Extreme poverty meant there was no way to find out and no way to participate (A, D, F, G). For example, Participant F noted, "Iskut has basic survival as their main focus – just keeping their children fed, schooled – they are literally trying to house themselves." All but one participant noted that communities were completely overwhelmed, without the capacity – human, emotional and financial - to engage in the process.

Additionally, inadequate consultation, as well as insufficient clarification about what constitutes 'consultation,' was described as a significant issue by participants, with law that is vague regarding policy and procedure. There was also "insufficient member control" (C).

Respondents also noted that history provided a barrier to participation with boom and bust economies related to a commodity driven market that left communities with debt and destruction with no resources to address socio-economic impacts. It was also found that historical pain and mistrust also provides a barrier to participation, with an Indian Act that imposes white settler forms of governance and a lack of traditional indigenous decision-making processes. Split communities also provided a barrier to participation as did regulatory discretion..

The following sections will discuss in more detail the barriers to participation as described by study participants, using direct quotes.

Participants commented on leadership issues and how communities were split over how much development they wanted in the Sacred Headwaters region. For example, one respondent noted that:

> There had been political turmoil within the band, communities and the Tahltan Central Council were having difficulty maintaining political coherence given the significant leadership issues...could have been related to the tribal chair selling resources to everyone at the same time, making deals with all of the companies, so

companies knew there was a place to do business and were more likely to approach without members being aware...the Tahltans had no idea what was being agreed to" (D).

Another participant described the difficulties faced by First Nations leaders compared with Western governments in that they are "governing their family, friends, neighbors, spouses, children, aunties and uncles – not simply making decisions for their constituency. Nothing can wear you down more than making decisions that impact your family and friends and their belief in you" (H).

Two participants mentioned that the amendments to electoral rules in 1999, allowing members living off-reserve and not personally affected by resource development on Tahltan land and to vote for Indian Act Chief and Council as well as on referendums on resource projects, has been a source of conflict in communities already divided (E, H). One of the participants mentioned that new laws allowing online voting have made it even easier for members living off reserve to vote, without ever having set foot on their traditional lands, further reducing connection to their traditional territories (H). Another participant noted that, "The crazy thing is, the Chief can live anywhere in the world" (E).

The majority of participants mentioned a lack of transparency as having been a primary cause for the conflict. Once the community most affected found out that there had been deals negotiated without their knowledge or consent, there was a perception of corruption. The community felt decisions were being made by those in governing roles who were not personally affected by the project but stood to benefit financially nonetheless through various business interests. As noted earlier in the thesis, the process had not been open, the community affected

had not known about funding that had been provided to the Chief and Council by the British Columbia government and industry sources. It was at this point the conflict erupted.

Vague law, policies and procedures regarding consultation was described unanimously as a significant problem. The lack of information and transparent processes resulted in a lack of meaningful consultation by those most impacted by Red Chris, as mandated by Section 35 of the Constitution (All). Participants noted that although government has been careful to say they allow participation in decision-making processes, there is really nothing to participate in. It was further note that 'consultation' was not well defined and was described unanimously as "ambiguous and unclear" (D).

When asked what consultation really meant, one participant stated:

> There are issues with Aboriginal Consultation/Accommodation – it exists – but it is difficult to define. The constitution talks about 'consultation and accommodation;' but if they can speak and are not heard and their comments are not addressed, then it can't be considered true participation, or consultation. There is talk of "traditional Indigenous Knowledge" but it is not well articulated – it was weak and it is weaker now under the new Act because the information that companies are required to produce is not well articulated" (D).

One participant also mentioned that the timing and size of the project is extremely important in determining the level of consultation for any given project, noting, "the timing of consultation matters so much – it has to be early but not too early - there have to be enough details about the project to embark upon a decision-making process. The level of consultation is dependent on the threshold or magnitude of the project" (G).

Two of the interviewees stated that communities are often reluctant to comment on a project, because if they do comment during an environmental assessment, governmental bodies can say they have been consulted, even if none of the community's concerns have been addressed (B, G). It was also noted by a participant that a provincial assessment is not an appropriate avenue for consultation since:

> …First Nations rights are enshrined in the Constitution: it's not a section in the BC or Canadian Environmental Assessment Act: it is much deeper than that - the Haida Taku Supreme Court decision said that provincial environmental assessment was not the appropriate forum for consultation. Generally, if a project is extremely close to a reserve, as Red Chris is – literally in Iskut's backyard and right in the middle of Tahltan traditional hunting grounds - the level of consultation required tends to be higher (G).

According to the interview findings, there were splits in the community prior to the project proposal; splits made worse during the approval process. "Industry comes to town and splits communities" was a common theme mentioned during the interviews – either with existing conflicts in communities that are made worse, or conflicts created by government and/or industry – either through bribes to Chiefs and/or Council members within the community or in communities located close to a proposed project but not directly impacted by the consequences of the project. "Industry takes advantage of dysfunctions" (H).This has resulted in neighboring communities in conflict with and between one another.

Splits can also be a result of the way land was granted, Nations with overlapping claims, or splits over how much development members want to see in their community.

The people of Iskut, the community sitting directly in front of the mine, and most impacted, did not participate in the Indian Act election largely due to their traditional way of electing leaders that involves complicated dynamics of ancient family territorial authority, hereditary clan ranks and affiliations, and lineages legitimized by principles unlike Western mainstream culture and governing practices (E, F, H). "Historically, decisions were made by a big family sitting around a table arguing and debating – some of your family may want resource development because it is the only way to feed their family, and others may not" (H).

Prosperity Mine was used as an example of regulatory discretion; a similar project to Red Chris, also a copper/gold mine located off the grid in Northwestern British Columbia. Prosperity was passed twice by the provincial government and rejected twice by the federal government. Federally, Prosperity received a Panel Review Assessment, the highest level of federal assessment possible, with mandatory public participation all the way through the project assessment process. In comparison, Red Chris, scheduled to be the largest open pit gold/copper mine in North American, received the lowest level of federal assessment, that of screening, with no mandated public participation. Reasons given for the difference in federal responses between Red Chris and Prosperity were at the time, the Tahltan Nation was a split community (All). The Tahltan Nation was deeply impoverished, lacking human and economic capacity to fight projects (All). A pro-development Indian Act Chief and Council with strong industry ties (B, D, E, F)

In contrast, the Xeni Gwet'in First Nations group, on whose traditional territory Prosperity lies, was described as a very cohesive and organized nation, with a long term, comprehensive land use plan (B, E, F, H). Two participants described being at a meeting with the Xeni Gwet'in prior to the Panel Review for Prosperity, and a woman called Mabel, the most *"kickass woman I've ever met"* (F, H), – 90 years old, who didn't speak English and was wheelchair bound (F,

H). Mabel had to be talked down from bringing her shotgun to the Panel Review meeting (F, H). Mabel and other members did not feel there was any recourse; that they'd had no role in the process – "they were literally ready to get out their guns to halt the project. First Nations have a fear of speaking out – due to having been residential school survivors, beaten for speaking out" (F).

The Xeni Gwet'in, have fought Prosperity Mine for 25 years, costing them millions of dollars, almost bankrupting themselves in the process (F). Most participants remarked on the Xeni Gwet'in leading the nation in a rights and title case on behalf of all Tsilhqot'in people in front of the Supreme Court of Canada (B, C, D, E, F, H). The decision came down in June 2014, in recognition of Aboriginal title (Tsilhqot'in Nation v. British Columbia, 2014 SCC 44). This will provide challenges to provincial and federal governments, business and the public to rethink fundamental structures of national governance in unceded areas, such as most of British Columbia and other parts of Canada with Nations that have not yet surrendered their lands through historic or modern treaties (2014 SCC 44).

5.3 Question 3: Attempts at Dispute Resolution

Were there attempts at DR prior to litigation?

This section will identify traditional dispute resolution practices that participants felt could have better managed or avoided the dispute altogether.

Participants unanimously said that the conflict would have been prevented if the government had followed the law by doing a Comprehensive Federal Environmental Assessment, which would have meant a better informed public, with those most affected by the development having a voice. All participants also said that communities must be consulted early and meaningfully, with groups most affected by a development being shown the clear benefits of

such development (All). As noted by the participants, it was stated that it was essential for a company to build a good relationship with the community, which involves listening to and observing community concerns, providing assurance and guarantees that these concerns will be addressed on an ongoing basis (All). All participants mentioned the importance of access to multiple sources of unbiased information as a means of building trust, creating relationships and reducing fear.

One of the participants also noted that a company's reputation is also vital in a community's level of trust (H). Transparency and honesty are important in decreasing the chance that a community may feel left out, cheated, dishonored, resulting in long term, and entrenched conflict, as shown in the Red Chris assessment process and resulting court case (All). It was also mentioned that highly interactive, horizontal decision-making processes reduce conflict potential, increase compliance with the law, build consensus, are empowering, and increase levels of satisfaction (All). Transparent processes prevent the perception of corruption. Additionally, when a community is engaged early on and is part of the decision-making process, "they are less likely to see the issue in black and white terms and opposition is not automatic" ("G").

One of the participants noted that correctly identifying 'who' should participate in the process is vital in preventing conflict, which should be done by a careful mapping of the actors (B). For instance, H said, "When it affects your family, friends, spouse, your kids, and your aunties and uncles. G said:

> …Those whose quality of life could broadly be affected. When a project hits you where you live – socially, economically, recreationally. Not just those directly

affected themselves, but also those with ecological expertise – technical, policy wise, in order to make decisions that are more sustainable.

Clear definition in all areas of environmental assessment and protection was described by all participants as essential in conflict prevention - in areas of law, policy and process. This was described by one participant as, "The Devil is in the Details" (B). When law, policy, process and expectation are unclear, conflict potential is raised, with potential effects on human rights (All). Participants noted that effective accountability and enforcement mechanisms must be in place including effective monitoring and enforcement – a problem mentioned by most participants, due to governments working far over capacity with too many projects to manage and a lack of resources.

Creating the social license to operate was described unanimously as imperative in resource development which is done by engaging face to face early, meaningfully, honestly, respectfully and directly with affected communities as a means of reducing fear, building trust, and creating relationships in the community. Ask participants what criteria are necessary in order for the project to move forward (All). Relationships are created by storytelling and open, honest dialogue recognizing the past, including providing assurance that history will not repeat itself. Those most impacted must derive clear benefit; there must be legally enforceable structures in place to ensure promises are carried out, including effective monitoring, accessible data and bonds that ensure effective post project remediation. This all helps to create a social license to operate in the community and avoids potential conflict.

5.4 Question 4: Impact of media

What was the impact of the media on events as they unfolded?

Participants were unanimous when discussing the enormous importance of the media in the way an issue is framed and the conflict is portrayed to the public, "definitely, no question, it has a huge impact on any given dispute" (C). Regarding the Red Chris conflict, participants said that the media varied, "some coverage was very reactionary, some was neutral, that there was not a lot of cheerleading going on, other than with the alternative media" (D). Other participants mentioned particular journalists, such as Mark and Stephen Hume, as having taken an interest in the project and the potential environmental impacts (E, G). Regarding the court case and media coverage, those involved in the case said that there was some coverage in British Columbia but not much. "There wasn't much coverage, the case was hard to explain, it was about a discrete legal question, a hard subject to get attention, hard to make it 'sexy'" (G).

Participants introduced me to specific media stories about the area and the conflict such as CTV the "Big Dig", which shows the effects of Red Chris on the region and the people, as well as provided me with clips by Wade Davis, which takes the viewer "to the heart and soul of the issue of Red Chris and the magnificence of the area" (E, I). (http://www.ted.com/talks/wade_davis_gorgeous_photos_of_a_backyard_wilderness_worth_saving.html). Also mentioned were pieces by CBC's Terry Milewski, who traveled to the region (http://www.cbc.ca/m/touch/canada/story/1.733972) (G).

5.5 Question 5: Outcome Satisfaction

How satisfied with the outcome of the case were you?

NGOs involved in the case said that for a few months, the decision was a huge victory. They were pleased that participatory rights had been recognized by the Supreme Court but disappointed that although the court found that the Responsible Authorities had erred in failing to conduct a comprehensive study as legally required under CEAA 2003, there was no additional requirement for a comprehensive environmental assessment on the project (A, B, D, G).

> One of the participants involved in the case commented on the Supreme Court decision: If the government breaks the law, there should be some kind of relief. In terms of remedy, it wasn't really fair – Justice Martineau did not err – he was never told by any of the respondents that a permit should be issued – there was never an alternative argument advanced by the respondents...it creates a very high threshold for a trial court judge to consider ghost arguments, it is unfair to decide that a trial court judge erred when he didn't do something that no one asked him to do. No one ever said that in the event that MWC was right, the proponent should get the permit – granted it wasn't the proponent that decided to change the scope of the project from a comprehensive study to a screening – the government did that. Since the Supreme Court ruling on Red Chris there have been a number of decisions where courts have declined successful applicants relief based on the Red Chris decision – not even in an environmental, public participation context. The court gave and the court took – gave to NGOs on the law and gave to the proponent on the grant of the permit...provided 'declaratory relief'" (Anonymous Participant).

5.6 Question 6: Measure of success

How was success measured?

In order to determine effectiveness, Ecojustice does an evaluation of each case. The group engages a consultant to ensure value is rigorously assessed and advises the organization on the case objectives; whether they were achieved, how they were achieved, and lessons learned during litigation.

Other participants involved in the Supreme Court case said that they were happy that the court recognized participatory rights in environmental decision-making, they were disappointed that although the assessment was determined as being illegal, there had not been a comprehensive environmental assessment on Red Chris mine ordered by the court (A, B, D, G).

5.7 Question 7: The Future of Decision-Making

What do you think the future holds regarding the evolution of environmental, social movements and ensuring public has a right to be involved in environmental decision-making?

When asked about possible future strategies one participant said they would be looking at all options (A) and transboundary water treaty enforcement (D) – but that strategies were up in the air. Participants working for NGOs noted that it was definitely more difficult for the NGOs they worked for to operate in the current political environment and they were unsure when interviewed at what level they would be allowed to participate in the future (D).

> Public participation is very much up to community groups now. The public policy space is closed and although the environmental assessment process may not be quite closed, it is a lot smaller than it once was. Ultimately, in trying to expand that space, we have succeeded in making it much smaller...if we hadn't incurred the wrath of industry with having to comply with CEAA, maybe they would have left it alone (D)

5.8 Question 8: Federal Government and Environmental Assessment

What do you think the new federal government streamlining environmental assessment will have on resource development and civic participation in environmental decision-making?

All but one participant speculated on decisions being made long in advance of environmental assessments related to the level of involvement the federal government was going to have in the project approval process due to regulatory discretion. All participants remarked that regulatory discretion increases conflict potential due to the lack of clarity and clear expectation about the kind of environmental assessment that will be conducted and how much

public participation will be allowed in the assessment process. It was felt that decisions are made based on the political climate, the project and what sort of barriers there may be to a project.

"Greatly increasing the discretion of whether a project qualifies for an assessment provides a fantastic opportunity for a proponent to lobby government to try and ensure their project is not subject to Federal Assessment" (D).

All but one participant commented on environmental assessments being 'rubber stamped', with the British Columbia Assessment process described as, "meaningless", "garbage", with every project given a green light. All participants speculated on 'Smoke and Mirrors'; the possibility that government will propose a ludicrous project, knowing it will inflame the public; followed by suggesting a less controversial project – the one they wanted all along. Participants also unanimously said that there is a huge disconnect between policy and regulation and all mentioned that monitoring and enforcement are a significant problem. Governments are over capacity and rely on industry to self-monitor.

5.9 Question 9: Charitable Status

How do you think the federal government's desire to take away charitable status will impact the way NGOs operate?

Those working on behalf of legal NGOs said there were definite challenges to working in the current political climate, including threats by government to withdraw charitable status, that it could lead to an "advocacy chill" (A). Funding for fragile NGOs is vital with intense competition for limited sources (G). Participants said that this would ensure that groups kept a very careful check on political activity (E), but participants said they are already very careful and go nowhere near the 10% allowable limit.

5.10 Question 10: Federal Government and NGO International Funding

How do you feel the Federal Government's stance on NGO international funding will have on the ability of NGOs to operate?

Participants interviewed in 2012, noted that if the public felt their voices were being constrained, it could cause a 'revolution'. If the public got angry enough, funding could actually go up. Two participants (C and D) said that international funders do not listen to governmental rhetoric and fund whoever they want to fund.

5.11 Question 11: Federal Government Labelling

What impact will the federal government labelling environmental groups as terrorists have on the way ENGOs operate?

"We are a bunch of lawyers!" (Laughing) – (Participant A, June 2012).

5.12 Conclusion

This chapter has identified the issues by participants that influenced the conflict and the ways the conflict might have been averted. The chapter also described the responses concerning the impact of the media and the evolution of NGOs. The problems identified as influencing the conflict included barriers to participation; such as split communities, history, remote reserves, a lack of transparency and trust, and no clear definition of what constitutes consultation and accommodation. Other problems included regulatory discretion, and unclear law, policy and regulatory processes.

The conflict may have been avoided by creating a social license to operate by ensuring access to multiple, unbiased sources of information (G, H). Access to information is empowering, increases compliance with the law, reduces fear, and positions are not automatic and is essential in creating the social license to operate (G, H). Creating the social license to

operate is done by engaging early, meaningfully, honestly and respectfully with affected communities, which reduces fear, builds trust, and creates relationships (G, C, B, F, E).

CHAPTER 6: FINDINGS: INTERVIEWS – STRATEGIES

6.0 Introduction

The NGOs in this study work together for a common goal, such as creating change, resisting change, or providing a voice to the politically disenfranchised. This chapter will identify specific strategies and methods used by NGOs during the Red Chris mine assessment process, the federal court cases and the effect these strategies and tactics had on public participation. This will be accomplished by examining information in detail gathered through interviews and supplemented through document analysis of topical literature.

First, the groups of strategies identified during data analysis will be presented along with their sub-strategies. Afterwards, strategies common to all groups as gathered through interviews and backed up through document analysis will be described. Each section will show results of the strategy described on the ability of the public in general and NGOs in particular, to participate in matters involving the environment.

This chapter identifies the main strategies used by the NGOs investigated in the Red Chris mine dispute:

- Create Emotion
- Use Legal Actions
- Challenge and Inform Government
- Increase Knowledge

A brief description of each major strategy will be presented in the following chapter, followed by the sub-strategies and the impact of each strategy on public participation.

6.1 Strategy 1: Create Emotion – Put a Face on It

The strategy, "Create Emotion – Put A Face on It," uses techniques that make issues visible on a global scale, for a diverse audience by evoking an emotional response in the audience, attracting attention to a cause by showing the people or the environment at the center of a cause ("H"). There were two prominent sub-strategies within Create Emotion, which are:

- Bodies on the Line (G)
- Connecting People to the Land (H)

6.1.1 Sub-strategy: Bodies on the Line

Bodies on the line is a way of bringing attention to a cause that is designed to evoke emotion and create the impetus for change" (G*).* "Bodies on the Line"' is specifically defined in this instance as a public protest (G), a military term meaning sacrificing your body for a cause. The strategy can work well or it can backfire, depending on the situation (G).

The strategy was used during the Red Chris Mine dispute by a group of Tahltan Elders most impacted by the mining project, who had been unaware and uninvolved in the decision-making process during the mine approval process (B, C, F, E, and D). Once informed, they forced themselves to be heard by putting their 'bodies on the line' to attract attention to their cause and arouse passion in their audience. 'Bodies on the line' had specific tactics including:

- Occupy
- Declare a moratoriums
- Blockades
- Work stoppage
- Purposeful Arrests

Each of these strategies will be described.

Tactic 1: Occupy

"Occupy" as a form of civil disobedience is a 'sit in' or protest by a group in which demonstrators occupy seats and refuse to move in order to express opposition and seek resolution to a problem. To be successful, the group must have a clear agenda with a specific demand: the action must not simply be a rally of protest.

On January 17, 2005, a group of 35 Tahltan Elders occupied the Telegraph Creek band office in peaceful protest after hearing about a great number of projects negotiated and approved on their behalf but without their knowledge or participation in any aspect of the decision-making process (B, C, E, F; Lang, 2005; Davis, 2011). Tahltan Elders had been unaware of the vast number of mega projects simultaneously under review on traditional Tahltan Territory (B, C, D, F, E; Davis, 2011). The Elders said that their chief had abandoned traditional values and asked him to step down, deeply concerned about the lack of consultation in negotiating new mining projects on their traditional territory (B, F, E; Lang, 2005; Davis, 2011). The group insisted they were not opposed to mining or other industries but "had a responsibility to ensure their land was left uncontaminated" (A) (A, B, E, F, H; McCreary, Pollon, 2012).

The Elders also included band councillors who were supportive of the occupation, having also been uninvolved in decision-making and not informed until the projects had been approved (B, D, E, F, G; McCreary, 2005). The decisions had been made by the two chiefs of the Tahltan and Iskut Nations, along with the central council but without the knowledge and support of the band council (B, E). The Elders had no prior knowledge of the deals struck between the Tahltan Central Council and the BC provincial government that had provided the Indian Act Chief and Council $250,000 per year to facilitate mining, logging, and hydroelectricity projects on Tahltan land (B. E; I; McCreary; Davis, 2011, p. 37). In addition, the Elders learned that industry had provided $100,000 to the Council to bring off-reserve Tahltans to vote and attend open meetings

held by industry officials, indicating that most Tahltans were largely in favour of the projects, when many of those living on reserve didn't even know about the projects (B, E; Lang, 2005; Davis, 2011, p. 37). However, those living on reserve were split over development on their traditional territories (All).

The conflict potential was made worse when industry executives at open house meetings told Tahltan Elders they were not seeking their approval to the project because consultation and accommodation had already occurred with the Tahltan Central Council, thus disrespecting those most impacted by the developments (D, F, E; Hume, 2005; McCreary, 2005; Davis, 2011). The Elders felt that the Indian Act Chief was in a conflict of interest due to his role as both the Chief Operations Officer of Tahltan Nation Development Corporation (TNDC), simultaneously bidding on mining projects, whilst also holding office as the Indian Act Chief, in the position of approving contracts on Tahltan traditional territory (B). Thus, a lack of information, lack of transparency lead to speculation of corruption by those most impacted by the project but uninvolved with the assessment process, inflaming the conflict (B, C, D, E, F; Davis). Decisions had been made by those less impacted by the project (All). The occupation was followed by a Moratorium on all resource projects on Tahltan land (McCreary).

Tactic 2: Declare a Moratorium

A Moratorium is the delay or suspension of an activity or a law, often in order to allow a legal challenge to be carried out; it must have a specific purpose, with particular demands. Once the Tahltan Elders found out about the number of projects under development, they called a moratorium (E; McCreary, 2005; Davis, 2011, p. 38 -39). The Moratorium stated that leadership issues must be addressed, there must be fair and legitimate processes honoring Tahltan custom and law, legal agreements were to be negotiated ensuring equitable share in

revenues, they were to be included in all aspects of decision-making and all prior agreements with government and industry were declared void due to absence of participation and consent of all Tahltans (E, F; MCreary, 2005; Davis, p. 38).

Tactic 3: Blockades

The action of blockade is to prevent entrance or exit to an area. In June, 2005, members of the Tahltan Nation set up a road blockade to prevent access to their land by industry (B, F, E; Davis, 2011, p. 34, 40 - 41). The Blockade unified communities in the region, galvanizing strength through a common cause; the desire to be heard meaningfully and respectfully, in response to lack of meaningful consultation and feelings of disrespect (B, C, E, F). Groups who had been once estranged unified in a common cause: concern over failed leadership (B, D, F, E), and insufficient recognition of the Rights and Title to their territory (A, B, C, D, F, E, G). In July and August of 2005, blockades continued and "cultural rebirth"' ensued with food appearing, catered by the village, cook outs, traditional story-telling, including representatives of nine First Nations, and hundreds of supporters, both native and non-native, uniting over a collective desire to protect the Nation's traditional land (E, F, H; Davis, 2011, p. 41).

Tactic 4: Work Stoppage

August 12, 2005 a group of heavy-equipment operators employed by Tahltan Nation Development Corporation (TNDC) exercised a work stoppage until the Indian Act Chief resigned as president of Tahltan Nation Development Corporation, due to potential conflict of interest with the Chief's role as Tahltan Indian Act Chief whilst also president of the TNDC, a company he personally benefited from financially (B; Paulsen, 2005; Davis, 2011, p. 36, 51).

Tactic 5: Purposeful Arrests

Often, when injustice has occurred or there is some sort of systematic oppression, a small number of people express opposition, drawing together to fight as a group. Sometimes sparks of opposition are quickly extinguished by those in positions of power, however, in other situations, only a small spark can fuel a movement that gains widespread attention, such as Rosa Park's refusal to give up her seat on a bus for a white person (Martin, reprint 1990). This action played a major role in the black civil rights movement in the United States – a small act that questioned those in authority (Martin). This was seen when the Tahltan Elders who refused to allow heavy machinery onto their traditional territory and as a result, were arrested (Davis, 2011, p. 44). Nine Tahltan Elders and six supporters were arrested at the blockade and brought international attention to the cause (H; http://www.firstnations.de/mining.htm; Davis, 2011, p. 44, 46).

6.1.2 Connect People to the Land

Skeena Watershed Conservation Coalition, established in 2004, do not "'strategize', rather they state they fight bad ideas and work together 'for their family" ("H"). The group is centered on communication, relationships and connection. Their goal is to "create meaningful change by instilling the value that the natural landscape is the reality – meaning that we are all dependent on a healthy watershed for our economy and our sustenance - believing that connecting people to the land so they can witness this dependence is the best way to move forward*"* (H). The tactics used to connect people to the land are:

- Connect with Arts and Videos – Show the Land and the People
- Create Programs

Tactic 1: Art and Videos - Show the Land and the People

Skeena Watershed Conservation Coalition note that they connect people emotionally and spiritually to the land by bringing them back to it, in a variety of ways. They host film nights,

movie screenings, book launches, art exhibits, concerts, traveling exhibits, lectures/slideshows; they produce and release videos showing and celebrating the Skeena.

For example, in 2009, a resident in the area, Ali Howard become the first person to swim the entire 610km Skeena River – her journey and experiences along the way were filmed (H). The swim involved 26 days of swimming white-water, with communities holding celebrations along the way (H). Following the swim, Howard toured the region and beyond with slideshows, video footage and speeches about her adventure. The documentary of the swim, *'Awakening the Skeena'* was chosen as an official selection at the 2010 Calgary International Film Festival (http://doublehaulproductions.com/awakening.php). The documentary won several awards at other festivals around the world and had television premiers on HBO and Movie Central (H).

In August 2010, the Skeena Watershed Conservation Coalition worked in partnership with a coalition of photographers from The International League of Conservation Photographers (iLCP) and Dr. Wade Davis, National Geographic's Explorer in Residence (http://www.thecleanestline.com/2010/10/conservation-photographers-focus-on-canadas-sacred-headwaters.html). Dr. Davis is also a long-time resident in the Sacred Headwaters area, who commented on the Red Chris mine project during the BCEA.

iLCP photographers were deployed to the Sacred Headwaters to capture images of the region, using a technique called Rapid Assessment Visual Expedition (RAVE). RAVE uses a team of highly-skilled photographers, video-graphers and journalists to focus attention on areas under environmental and cultural threat by increasing public awareness. This was accomplished through the release of films and an art book filled with photographs of the Sacred Headwaters. Three examples of photographs taken during the RAVE can be seen below in Image 1, Image 2 and Image 3.

Image 1 by Paul Colangelo

Image 2 by Joe Riis

Image 3 by Joe Riis

More images in the book can be found here: http://www.amazon.ca/The-Sacred-Headwaters-Wade-Davis/dp/1553658809. Davis' book *'The Sacred Headwaters'* was released in October, 2011; rich in detail, with stories about members of the community, their names, stories, triumphs, lifestyle and the enormous challenges they have faced.

Tactic 2: Create Programs

Skeena Watershed Conservation Coalition connects people with the land by creating and delivering a wide and diverse array of programs (H). Programs include Conservation Camps for Kids, with kids camping in tents, learn how to forage an entire meal from the forest, swift water navigation, safety techniques. They learn horse riding and husbandry skills, how to cook food on a campfire, overnight rafting and how to craft medicines from the forest, issues of conservation and how to be an active citizen (SWCC). SWCC also provides public education and outreach programs, such as connecting youth with watersheds in a program called 'YOW!', or 'Youth on Water', and 'Up Your Watershed!', with the goal of positive action by getting out on the rivers and behavioral change in the way watersheds are viewed, in order to preserve sensitive ecosystems (H).

Trapper's Paradise is another program created to bring people back to the land -- "Mountain Man (Curtis Dilks) and Wild Woman (Diis Galaxw- Skyla Lattie) head out to Gwininitxw traditional territory to learn how to become trappers for the winter.

Skeena Watershed Conservation Coalition recognizes the significant role women play in the health and sustainability of their communities, which are matrilineal in nature. As a result, the group sets up programs encouraging and empowering women; such as 'WOW!', or 'Women on Water! WOW! is a program developed by SWCC with Tides Canada that provides knowledge and empowers women by engendering confidence and leadership skills in an effort to move

communities towards a positive and sustainable future (H). The program is run by female guides, a female safety kayaker and includes female participants ranging in age from mid-teens to middle age, involving storytelling, sharing feelings, fears and knowledge generation in a supportive environment, while learning how to raft through Class 1V white-water.

Skeena Watershed Conservation Coalition was awarded a Top10 Tides Canada reward in March 2013 for working effectively as a coalition of diverse communities united in their pursuit of environmental and cultural sustainability for British Columbia's Skeena Watershed and Sacred Headwaters. Projects included providing unique school programs and a summer conservation camp for the region's children and youth that teach about fish and wildlife, First Nations culture and the importance of the Skeena watershed. The group were successful in working with other NGOs, government and industry to focus collaboratively on solutions rather than solely on problems. This includes working closely with First Nations to teach the cultural components of their projects and programs.

The area was awarded historic protection from further gas development on December 18, 2012, when the government of British Columbia announced the ban of oil and gas development in the Sacred Headwaters (H; Davis, 2011, p. 40 – 41; Zalubowski, 2012).

The collaborative efforts of groups seeking a common goal focused national and international attention on the region, demonstrating the huge power people have when they work together for a common cause. "Create Emotion" and "Connect People to the Land" strategies together generated nearly 100,000 petition signatures from around the world, saw several international actions in the Netherlands, meetings with the Shell Canada President, and high level government officials.

6.2 Strategy 2: Use Legal Action

This section will identify the legal strategies used by NGOs in the Red Chris mine case.

The legal sub-strategies, based on the interview results, are discussed in this section:

- Represent or Advise
- Apply for Judicial Review
- File Complaints with Security Regulators
- Use Strategic Text Cases
- Seek Intervener Status
- Appeal to Supreme Court

6.2.1 Sub-strategy: Represent or Advise

A group or individual can seek advice from a legal firm on matters concerning the law, such as an NGO concerned with laws involving the environment. In Canada, mining falls under provincial jurisdiction (B). In 2003, MiningWatch Canada (MWC), a federal group, was informed by its provincial counterpart, the Environmental Mining Council of BC (EMCBC), about the Red Chris Mine resource development project that was causing concern in Northwestern British Columbia (B, D, F, E). As a result, the organization had been watching the project assessment during the provincial assessment process, intending to pick up pieces falling under federal jurisdiction, such as impacts on fish and fisheries habitat (B, D, and G).

Pre-application Provincial and Federal comments on the project stated that the proposal was likely to result in the harmful alteration, disruption or destruction of fish habitat, triggering the 2003 Canadian Environmental Assessment Act, meaning a comprehensive federal assessment would be conducted, including mandatory public participation (A, G, B, D;

Alexander, 2004; Nishimura, 2004; 2007 FC 955, p. 35; 2008 FCA 209, p. 3-4; 2010 SCC 2, [2010] 1 S.C.R. 6).

A primary scoping determination by DFO, stating that the proposed project would require a comprehensive study level review based on a proposed ore production of 50,000 tons/day, the threshold of which greatly exceeded the minimum threshold of 600 tons/day necessary to trigger a comprehensive federal assessment (B, G; BCEAO; FC 955, p. 36). (http://a100.gov.bc.ca/appsdata/epic/documents/p238/1077555293698_98048b0e65984af0bfb6fa95cef705b7.pdf). The Department of Fisheries (DFO) posted a "notice of commencement of an environmental assessment" on the Canadian Environmental Assessment Registry (CEAR), announcing that DFO would be conducting a comprehensive study commencing May 19, 2004 (BCEAO; 2007 FC 955, p. 32). The project was being assessed by the Government of British Columbia and the CEAA agency, with the CEAA acting as the federal environmental assessment coordinator (FC 955, p. 36). DFO circulated a letter to other federal departments allowing them to determine whether the project was of any relevance to them (FC 955, p.35). In June 2004, Natural Resources Canada (NRCan) responded to DFO, stating they were also likely a responsible authority on the basis of section 7 of the explosives act (2007 FC 955, p. 37 -38).

MWC posted notice of the project on their website, wrote letters to the president of CEAA, Assistant Deputy Minister of NRCan, DFO regional manager, DFO assessor, and the Director General of Habitat Management for DFO outside of the CEAA process, asking for the opportunity to comment on the project (B, D, G; 2007 FC 955, p. 55). The DFO responded, saying they could comment during the Comprehensive Federal Assessment (B, D, and G). MWC were very concerned that the Fisheries Act be appropriately used and enforced, particularly with the number of projects going through the approval process simultaneously, each triggering

Federal Fisheries (A, B, D, E, F, and G). MWC tried rigorously, but unsuccessfully, to allow debate to occur during this time (B, D, and G). On November 17, 2004, an invitation to participate was released to the public, indicating that a public comment period would be held until January 25, 2005 for comments related to "specific issues as they relate to the technical review of the EA application" (BCEAO; FC 955, p. 30).

There were ten public comments submitted during the comment period listed on the BCEAO website, all of which indicated grave concern over the project and the environmental assessment process (B, G; 2007 FC 955, p. 30). This included concerns on behalf of the members of the Tahltan Nation and the Tahltan Central Council, sharing the same concerns as previously indicated by the BCEAO, DFO and NRCan (Rattray, 2005). Numerous public comments, including those of the Tahltan Central Council, indicated concern over the lack of adequate public consultation during the BCEA process (B, D, F; Rattray, 2005; BCEAO; FC 955, p. 30).

In December 2004, during the Red Chris assessment, a Federal Court of Canada decision was rendered, that of Prairie Acid Rain Coalition v. Canada (Minister of Fisheries and Oceans), known as "True North", holding that the scoping of a project was within the discretion of a Responsible Authority (G). Shortly after, the DFO downgraded Red Chris Mine's level of assessment from a comprehensive study to that of a screening level assessment (B, G; FC 955, p. 32, paras 93 – 97, 108 – 111). DFO's reasons were given in a December 9, 2004 letter from the DFO Director General, stating that consistent with the direction provided by the courts including the most recent decision in 'True North", no comprehensive EA was conducted because the department of fisheries and oceans had decided to exclude the mine and mill from consideration and include in the assessment only the tailings impoundment area, the water diversion system, and the explosives storage facility (A, B, D, G; 2007 FC 955, p. 45). The letter from the Director

General also referred in his letter to changing the scope of the project based on new fisheries data received by DFO from the proponent (FC 955, p. 40 – 42). As a result of the change in the level of assessment, no further public consultation was necessary. MWC was unable to communicate their concerns related to the environmental, economic and social impact of the mine (B, D, and G).

In May 2006, MWC received a standard notice email from CEAA informing that the Red Chris Mine project had been approved (B, G). MWC contacted Ecojustice and was advised that Red Chris Mine, under 2003 CEAA, based on the tons per day alone, made it likely the assessment was illegal. The government had "handed in a comic book instead of an assessment" (G). MWC were cautioned prior to going forward that only 1/20 cases get leave to appeal (G). MWC's first litigation commenced action with only 30 days to file a case for Judicial Review (G).

6.2.2 Sub-strategy: Apply for Judicial Review

Applying for Judicial Review is the practice of asking courts to review decisions made by a governmental body. MWC's application for Judicial Review was filed in June 2006 by Ecojustice lawyers, seeking to quash the approval for the proposed Red Chris Mine Project on the basis that the responsible authorities had breached their ongoing duty to hold public consultations on their proposed scoping of the project, pursuant to s. 21 of the Canadian Environmental Assessment Act (Section 21(1) of CEAA 2003 (A, B, G). They asserted that the mine, as proposed, would turn a fresh lake and the headwaters of three creeks in northwestern BC into tailings dumps, destroy fish habitat and risk contamination of the Stikine watershed (42; A, B, G). The Federal Court was asked to: prohibit the future issuance of federal environmental approvals required under the Fisheries Act and Explosives Act to bcMetals, prohibit a decision

by the federal Cabinet to amend the Metal Mining Effluent Regulations (FC 955, p. 51 - 52; SOR/2002-222).

MWC's application was allowed by the Federal Court, holding that the Federal Department of Fisheries and Oceans and Natural Resources Canada had acted unlawfully by: splitting the project; Responsible Authorities having improperly reduced the scope of the Red Chris Mine environmental assessment as proposed by the proponent and prevented the public from participating in the scoping of the project and the federal environmental assessment (2007 FC 955, p. 71 -73).

Mr. Justice Martineau found that the DFO letter from the Director General of DFO downgrading the scope of the project based on new fisheries data, relied on data that did not exist (B, G; 2007 FC 955, p. 42, 102). Justice Martineau ordered the Red Chris mine be denied any federal permits on the basis of the unlawful environmental assessment, commenting that DFO's re-scoping of the project from a Comprehensive Study down to that of a screening in December of 2004 had "all the characteristics of a capricious and arbitrary decision which was taken for an improper purpose" (B; 2007 FCC 955, p, 111; Milewski, 2008). As a result, dozens of federal projects being assessed as screening level assessments were immediately bumped up to comprehensive level assessments in compliance with the ruling (D, G; Canadian Environmental Assessment Agency).

6.2.3 Sub-strategy: File Complaints with Securities Regulators

Provinces and Territories in Canada are each responsible for securities regulations. Their mission is to build a securities regulatory system that protects investors from fraudulent practices by creating a fair, efficient and vibrant system of harmonized securities regulation, policy and

practice. On June 9, 2006, MWC filed a notice of application for Judicial Review of the environmental assessment of Red Chris Mine (B, G).

On June 9 and June 27, 2006, bcMetals issued press releases suggesting that all federal environmental approvals for the proposed Red Chris Mine had been received. The press release did not mention the Judicial Review Application before the Court (B, G). As a result, MWC filed a formal complaint with securities regulators in British Columbia on September 8, 2006, informing that bcMetals had misrepresented the risks of its proposed Red Chris Mine to its investors by failing to disclose risks associated to the project due to pending litigation (B, G; Kuyek, 2006). The relief MWC sought was not granted at the time, although those working along with MWC were invited by mid-level staff from the British Columbia Securities Commission to take part in some informal conversations about MWC's complaint (G).

British Columbia Securities Commission asked for advice about how to deal with policy regarding disclosure by junior mining companies due to a lot of undisclosed legal risk involved in terms of what constitutes First Nations consultation and accommodation (G). Prior to this, there had not been a lot of guidance found regarding nonfinancial nondisclosure (G). MWC has made securities complaints a number of times provincially, federally and internationally, successfully seeking to clearly articulate Standards of Disclosure for Mineral Projects with results that would have been "exactly what MWC were looking for" (G).

In 2010, changes were made to Standards of Disclosure for Mineral Projects (NI 43-101), as well as to the British Columbia Securities Act, governing how issuers disclose scientific and technical information about their mineral projects to the public. Imperial Metals updated their 'block model' (the resource estimation that includes the quantity and location of minable minerals and the environmental impact during development, operation, closure and post closure/

remediation of a mine) in a January 2012 Technical Report, preparing the new statement based on changes to National Instrument 43-101 (ImperialMetals/RedChris).

6.2.4 Sub-strategy: Use Strategic Test Cases

As noted, the use of a strategic test case is a legal action whose purpose is to set a precedent. Between 1996 and 2006, Environmental NGOs litigated 5 test cases to ensure broader, more meaningful environmental assessments federally, by seeking to change the governmental practice of scoping environmental assessments narrowly in an effort to avoid more robust, comprehensive environmental assessment studies (G).

In February of 2006, a lawyer, working on the "True North" case (Prairie Acid Rain Coalition v. Canada (Ministry of Fisheries and Oceans), 2006 FCA31, [2006] 3 F.C.R. 610) had been searching the Canadian Environmental Assessment Registry for similar cases (G). In particular, a project was sought that had been scoped initially as a comprehensive study and then reduced to a screening level of assessment (G). The lawyer noted that the Red Chris Mine fell into the same category as "True North". Both had been scoped initially as comprehensive studies and reduced to that of screening, with production levels that were clearly well over the 3000 tonnes per day allowed for a screening assessment (A, B, D and G).

Legal NGOs tend not to go the court route if the government is open-minded and prepared to listen (G). However, artificial splitting and lowering the scope of projects had gone on for ten years and it was felt that the only thing DFO was going to be responsive to was court direction, with one participant saying, "to be perfectly honest, it was going to take a legal hammer" regarding project splitting which resulted in reduced public input (G).

When MWC contacted Ecojustice about the potentially illegal assessment under the new amendments to CEAA, three discreet criteria were sought, described by one participant as "a

weird kind of lawyer ambulance chasing: a case that was of national/public importance, which showed an action being broadly practiced across the country; a project over a certain threshold (size), that by virtue of its size would automatically require a comprehensive assessment but had nonetheless been scoped as a screening level of assessment and thus, 'fast tracked'; a case in which the assessment began shortly after the newly amended 2003 Canadian Environmental Assessment Act, involving Section 21, in which the public had not been allowed to comment".

Due to the fact that MWC had tried rigorously, but unsuccessfully, to comment on concerns regarding the Red Chris Mine, and allow debate on the project, the applicant could reasonably go to the Supreme Court and say that due to the reduction in scoping determination, they had not been able to participate during the comment period (G). The case wasn't about the mine itself; rather it was about the way the newly amended Canadian Environmental Assessment Act was being interpreted. Ironically, the use of a public interest test case was the only avenue open to MWC after having been shut out of commenting during the British Columbia Environmental Assessment process (B, G).

As noted, MWC et al. successfully appealed in 2007 at the Federal Court level (FC 955). The decision was later overturned at the Federal Court of Appeal in 2008 in Minister of Fisheries and Oceans et al. v. Miningwatch Canada, 2008 (FCA 209).

6.2.5 Sub-strategy: Seek Intervener Status

Seeking leave to intervene is a procedure that allows a party not included in the litigation before the courts to join an ongoing court case, either as a matter of right or at the discretion of the court, without the permission of the original litigants. The rationale for the intervention is that the ruling in a particular case may affect the rights of parties not appearing before the court, who, ideally, should have the right to be heard. Courts tend to allow an application to intervene if

the applicant is able to provide another perspective on the issue in front of the court without expanding the issues. Intervening parties are permitted to file and submit a factum, which is a statement of the facts in a controversy or legal case and are given a time period for oral arguments before the court. Organizations are granted leave to intervene ensuring representation at the court, public v. private interest, allocation of resources, type of appeal, if the organization has an 'interest' in the litigation. Conversely, there are a number of reasons an Intervener can be denied Intervener status; such as a risk to legislation, allocation of resources, other intervening parties have the same goal, or are the same kinds of organizations (G, B).

The Canadian Environmental Law Association sought leave to intervene on behalf of a number of NGOs during Red Chris (A; Canadian Environmental Legal Association Intervener Factum). Industry groups such as the Mining Association of British Columbia, Association of Mineral Exploration of British Columbia also sought Intervener status as did the Tahltan Elders, known by then as a society called the Klabona Keepers. The Klabona Keepers shared the same status as the Tahltan Central Council. Of all applications seeking leave to intervene, the Klabona Keepers's application to intervene was the only application dismissed; also the only group seeking intervention status directly affected by the mining project (G). It was noted that if they had been given Intervener status, the Supreme Court would not have been able to say that there had been no complaints about the process or the project by those most directly impacted, which would have greatly changed the outcome of the Supreme Court Case (G).

In 2012, Intervener status was changed as a result of changes to the Fisheries Act, with increased administrative hurdles, making it much harder for the public and public interest groups to intervene. Intervention status is now up to the discretion of various governmental bodies.

6.2.6 Sub-strategy: Appeal to the Supreme Court

Appealing to the Supreme Court is a way of providing checks and balances for democratically elected governments. Judicial remedies can have immediate effect, offering clear enforceability in the needs/demands of claimants in response to an unjust denial of a particular right or social benefit to an excluded group (A). MWC had a big decision on their hands: whether or not to appeal the 2008 FCA ruling (G). NGOs have to be very careful and strategic about the cases they choose to pursue because of extremely limited funding sources for litigation, as well as the concern that they could be responsible for all court costs incurred during the trial which essentially could put the future of the Non-Governmental Organization in jeopardy (B, G, D). MWC decided to go forward to the Supreme Court, which was noted by participants as having been a 'brave' action, considering MWC was "suddenly massively cost exposed –they'd suddenly had to cough up quite a lot of money– thus it was a very difficult decision given the potential consequences" (G).

On September 19, 2008 MWC filed and was unanimously granted an application for leave to appeal at the Supreme Court of Canada based on the Federal Court's ruling on June 13, 2008. The Supreme Court agreed with the statutory interpretation arguments advanced by MWC: that the responsible authorities had erred in failing to use the 'project as proposed' by Red Chris Development Company Ltd in determining whether the Canadian Environmental Assessment Act had been triggered under the Act; whether the Exclusion List Regulations of 2007 applied; if a federal assessment was to be conducted, should it proceed by way of comprehensive study or by that of screening (2010 SCC 2)

On January 21, 2010, the Supreme Court handed down a landmark ruling stating that government and industry were free to use any and all federal-provincial coordination tools available, but they were still required to comply with the provisions of the Canadian

Environmental Assessment Act pertaining to comprehensive studies (2010 SCC 2*)*. The ruling made a declaration as to the proper interpretation of s. 21 of the CEAA and the obligations of the federal government and that the Responsible Authorities had erred by failing to conduct a comprehensive study. Further relief was not granted. Justice Rothstein, when handing down decision, commented that further relief was not granted because MWC were public interest litigants who had brought a test case primarily out of concern for the legal precedent and they, 'had not participated in the provincial environmental assessment', ironic, given that the reason they were in court was because the group had not been allowed to comment or participate in the provincial assessment.

The decision in MWC v. Canada (Fisheries and Oceans) had significant implications for federal environmental assessments and public participatory rights in Canada by determining that federal officials could not split projects into small parts in order to avoid rigorous Comprehensive Environmental Assessment requirements including meaningful public consultation. Lara Tessaro, the lawyer, representing MWC remarked;

> The Supreme Court has given Canadians back their voice and, with it, their ability to influence major industrial development across the country. This landmark decision confirms that the government can no longer shirk the environmental protection duties that Parliament has assigned to it. The court has confirmed that the federal government cannot lawfully split proposed projects into little pieces and assess only pieces of them (CBC, 2010).

A mining industry representative, the vice president of corporate affairs with the Association for Mineral Exploration British Columbia, Byng Giraud, commented;

> The federal government is required to review the federal Environmental Assessment Act, it has to be reviewed every five years, which is coming up this year, so this is timely" (CBC, 2010).

In the wake of the decision, the Canadian Environmental Assessment Agency issued a press release after the judgment, stating that they were reviewing ongoing assessments to make sure they were compliant with the decision made in MWC v. Canada (G; Canadian Environmental Assessment Agency). The Red Chris Mine Decision had international implications in terms of environmental safeguards by recognizing the right of the public to be involved in environmental decision-making. This provided some guidance going forward about the importance of public participation in reducing conflict and enhancing human rights protection (D).

International organizations in Argentina, Columbia, Panama had watched the Red Chris case as an area of interest in terms of policy, due to ongoing global debates about how to best manage ecological concerns and as a result were interested in the Canadian case (D). It was felt that the court's response to the issue of project splitting, thus maintaining the integrity of all parts of EA's by providing guidance about assessing projects in their entirety, showed Canada as an international leader in environmental policy (D). Following the Red Chris mine decision, a mining company in Argentina was forced to leave by the local population following massive protests in response to police repression, with a judge ordering a temporary halt to further mine work (D).

In March 2010, amendments to the Canadian Environmental Assessment Act were introduced in a budget bill (Bill C-9), the "Jobs and Economic Growth Act". The impacts were immediate and significant, responsive to MWC v. Canada (Fisheries and Oceans). The

amendments removed Section 21 from the Act entirely, eliminating thousands of environmental assessments and greatly reducing public participation in environmental reviews of industrial projects (A, B, D, G). The amendments also gave complete discretion to the Minister about the scoping of assessments.

The Omnibus budget of 2012, Bill C-38, repealed the Canadian Environmental Assessment Act altogether, the only law completely repealed. The changes greatly increased regulatory discretion, cabinet control and further reduced the ability of the public to participate (A, B, C, D). Participant C remarked that this had been 'shockingly undemocratic" compared to the process leading up to the implementation of CEAA 2003.

6.3 Strategy 3: Challenge and Inform Government

Groups inform and pressure government about changes in law and policy that they would like to see implemented as a means to promote interests important to them. As was informed by the interview participants, the Challenge and Inform Government strategy has six sub-strategies:

- File petitions to the Auditor General
- Work with MPs to introduce Bills to Parliament
- Lobby government
- Attend roundtables
- Make submissions to the Senate
- Participate in and attend Parliamentary hearings

6.3.1 Sub-strategy: File Petitions to the Auditor General

Established in 1995 as a result of amendments to the Auditor General Act, the environmental petitions process provides Canadians with a formal means to bring their concerns about environmental issues to the attention of federal ministers and departments and receive a

response from appropriate ministries. Environmental petitions are a way the government promotes democratic process in ensuring transparency and accountability in federal environmental management. Petitions are monitored and reported on in the Annual Report on Environmental Petitions, with the results published on the Office of the Governor General Website (http://www.oag-bvg.gc.ca/internet/English/admin_e_41.html). The Annual Report speaks to trends, issues of concern, the timeliness of Ministerial responses (Office of the Auditor General of Canada).

Petition responses, departments and agencies may not always be able to provide fully informative responses if the subject of the petition is before the courts, relates to ongoing investigations or imminent legal action. Limited responses may also be related to Cabinet confidences; such that information in records describing a collective decision, policy-making process of ministers or Cabinet. This includes records on proposed legislation or regulatory processes, such as changes to the Fisheries Act.

The Fisheries Act was enacted in 1868 to conserve and protect fish. Habitat protection was added to the Act in 1977 to include the protection of healthy ecosystems on which fish depend. Under Subsection 35(1), of the Fisheries Act, it is illegal to carry out work that results in the harmful alteration or destruction of fish habitat (Fisheries and Oceans Canada; A, B, D, G). Since its implementation, no mining company has been charged for violating its terms, although one in four active mines has been found out of compliance as of May, 2000 (Kuyek, 2000). In 2002, Schedule 2 was added to the Metal Mining Effluent Regulations (MMER), allowing for lakes and rivers to be redefined as "Tailings Impoundment Areas" if they had been used for mining waste in the past.

Environmental groups were assured that Schedule 2 would not be used for healthy bodies of water (Council of Canadians: http://www.canadians.org/schedule2). The use of MMER (2) in the Red Chris Mine approval process resulted in reducing the scope of the project to the lowest level of environmental assessment, avoiding the proper public participation mandated as part of the CEAA 2003 in the reclassification of fresh bodies of water (A, B, D, G). As a result, MWC filed a petition to the Auditor General in November 2007, concerned that the amendment would allow the mining industry to deposit hazardous by-products into healthy lakes and rivers by reclassifying them as "tailing impoundment areas", as had happened with the Red Chris Mine (B). The petitioner requested that no other lakes be added to Schedule 2 until full public consultation was held on the issue. The petition stated that during the previous MMER review (2005-2006), the Canadian Environmental Minister had acknowledged that there were concerns regarding consultation on MMER (2) in terms of appropriate consultation. Further, the petition also informed that the input by a Multi-stakeholder Advisory Group in 2006 had not been addressed. The Advisory Group's concerns were shared by a large number of Canadians about the reclassification of natural water bodies into 'Tailings Impoundment Areas'. The Auditor General's response to MWC's petition was;

> Issues raised by petitioners have been of interest to members of Parliament. One of these issues relates to the environmental impact of amendments to the federal Metal Mining Effluent Regulations under the Fisheries Act, which allow healthy fish-bearing water to be classified as a tailings impoundment area (issue raised in petitions 219 and 219B). This issue is the subject of a private member's bill currently before Parliament, and it received considerable media coverage" (Auditor General, 2008).

6.3.2 Sub-strategy: Work with MPs to introduce Bills to Parliament

Introducing Bills to Parliament was described by participants as a means to create a new law, or to change an existing one. Bills considered by the House or the Senate are usually public bills, concerning matters of public policy. Once introduced, a bill goes through formal stages including three readings during which time parliamentarians debate the bill. Prior to the third reading the bill is sent to a committee where members examine the bill in detail. Bills that have the greatest possibility of being enacted are usually introduced into parliament by the government, although a bill may be introduced without formal government backing. This is known as a Private Member's Bill.

In February 2009, a Private Member's Bill was introduced to the House by Liberal Member of Parliament John McKay, described as an 'Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries' (Osler, 2010). The goal of the bill was to create accountability mechanisms for extractive companies based in Canada to ensure human rights were observed, as a means to prevent conflict and environmental degradation (http://openparliament.ca/search/?q=bill+c-300. B, D). It was felt that the bill would make Canada more competitive and successful and help with uncertainty related to countries without clear law, policy and regulation related to the extraction industry. The bill received broad endorsement and passed its first reading in the House in April 2009.

When the Supreme Court of Canada made its decision on the Red Chris Mine case in January 2010 recognizing participatory rights in environmental decision-making, international human rights organizations felt the ruling, along with Bill C-300, could make a big difference in extraction operations in the developing world. Bill C-300 was also touted as a way to increase assurance to investors and pension funds that mines would have less chance of being caught up

in international courts regarding human rights violations and provide stability to corporate valuation.

Barrick Gold Corporation, Goldcorp Inc. and Kinross Corporation set out their joint position on Bill C-300, declaring the Bill unnecessary and damaging to Canadian business, warning it would adversely affect the Canadian mining industry by risking the competitive position of Canadian companies. This in turn would result in reputational damage to Canadian companies, undermine the multi-stakeholder and collaborative approach to Corporate Social Responsibility, creating incentive for companies to relocate and ignore existing regulatory frameworks for Corporate Social Responsibility (Barrick, 2009).

In October 2010, Bill C-300 made it to its third and final reading before the House of Commons. According to CBC.ca, the mining industry had lobbied intensely against Bill C-300 with nearly 300 visits by registered lobbyists representing Barrick Gold, Vale Canada, IAMGOLD and the Prospectors and Developers Association of Canada prior to the final vote (Engler, 2012).

Bill C-300 was defeated by a slim margin, 140-134, after "an assault on Parliament Hill by mining sector lobbyists" (Keenan, 2012; Rennie, 2010).

6.3.3 Sub-strategy: Lobby government

Traditionally, lobbying government has been seen as a practice of petitioning the government over perceived injustices; a means to seek intervention for issues of concern. It has long been a way for individual or community grievances to be heard and is considered a treasured right in democratic process. Lobbyists include those working for organized groups, those working in the private sector, for corporations, those holding public office, including government officials, or those working on behalf of advocacy groups. There are professional

lobbyists hired to promote issues on behalf of a group or individual and there are lobbyists who volunteer to advocate on behalf of a group or individual.

Lobbying can be seen as an altruistic act or in more cynical terms - as influence peddling; a practice filled with ethical dilemma sand rife with corruption. As a means of limiting the possibility, Canada made changes to the Lobby Act in 2008 to increase transparency (Office of the Commissioner of Lobbying of Canada). The Lobby Act of 2008 is built on the premise that free and open access to government is a legitimate and essential activity contributing to democratic process. In order for lobbying to be viewed with public confidence; it must be an open process, with the public having access to the issues being lobbied and those acting in a position of lobbyist. The Lobby Act of 2008 requires lobbyists to register so that the general public and those holding public office know who is active as a lobbyist, who is inactive, what organization or individual is being represented and what their background is, i.e., if they formerly held public office or worked for the government (Justice Laws Website). A “public office holder" refers to anyone occupying a position in the federal government, including members of the Senate and the House of Commons and their staff, officers and employees of federal departments and agencies, members of the Canadian Armed Forces and the Royal Canadian Mounted Police (Lobbying Act (R.S.C., 1985, c. 44).

The Office of the Commissioner of Lobby of Canada website lists ministries and officials in communication with each lobbyist, who the lobbyist is advocating for, the number of communication reports, and the dates of each lobbyist registration. The site also lists in detail what subject was lobbied, when.

MWC is listed on the Office of the Commissioner of Lobby of Canada website as having four lobbyists working on behalf of the organization, none of whom have held public office.

Conversely, the Mining Association of Canada (MAC) is listed as having six active lobbyists, five inactive lobbyists, ten consultants and one in-house organization. Of the eight lobbyists employed by MAC, seven are listed as having held public office (Office of the Commissioner of Lobbying). Each lobbyist is registered separately and each has subject matters that they lobby on behalf of (ocl-cal.gc.ca).

Bill C-38 was passed in the House of Commons in June 2012, including a new Canadian Environmental Assessment Act with significant changes to environmental legislation, such as changes to the National Energy Board Act, the Canadian Oil and Gas Operations Act, the Nuclear Safety and Control Act, the Fisheries Act, the Canadian Environmental Protection Act and the Species at Risk Act. In the six months prior to the new 2012 CEAA, MAC reported 52 communication reports; 49 monthly communications and three registrations (Office of the Commissioner of Lobbying). MAC held meetings with top level officials, such as Senators, MPs, Directors of Policy in the Prime Minister's Office, the Minister of Department of Fisheries and Oceans, Minister of Natural Resources, the Minister of Foreign Affairs and International Trade Canada, the President of the Canadian Environmental Assessment Agency, deputy minister for the Prime Minister, Chief of Staff, – among many other highly ranked officials.

MAC lobbied for funding for the Canadian Environmental Assessment Act, requested reduced delays in mining projects moving forward, continued investment in infrastructure projects to help the extraction industry, the need for rail transportation to transport mineral products, support for human resource development and labor training programs, particularly training for Aboriginal Peoples. MAC sought changes to the implementation of the *Species at Risk Act***,** *Fisheries Act* and the *Metal Mining Effluent Regulations* in the streamlining of regulatory processes.

Johanne Senecal, Vice President of Government Affairs and Communications for the MAC said that the group considered Bill C-38 and the new 2012 Canadian Environmental Assessment Act, 'the "clear win" for MAC, pleased with fundamental changes made to address the uncertainties, inefficiencies and barriers facing industry under the former Act (Denstedt & Duncanson, 2012; Burgess, 2013).

6.3.4 Sub-strategy: Attend Roundtable Meetings

A roundtable meeting is a venue for peers to sit down and discuss an issue, talk about trends, share opinions, strategies, tactics, and exchange views with colleagues sharing similar interests or concerns. The 'round' table denotes that there is no beginning and no end; there is no head of the table and everyone present is considered equal and all are encouraged to participate.

Groups inform and pressure government about changes in law and policy that they would like to see. In 2008, the Mining Association of British Columbia (MABC) held a Roundtable meeting detailing challenges facing the mining industry. The mining association identified challenges including a problematic regulatory environment, environmental assessments that involved duplication, were too slow and unpredictable, with a lack of federal and provincial harmonization. They identified problems associated with delays in initial project scoping and the actual review process, problematic fisheries act, a desire for foreign labor, skills training problems associated with lack of clear definition of what constitutes consultation and accommodation with First Nations, a limited capacity to review a large volume of new projects in a timely manner and the need for infrastructure such as a highway and hydro-electric power to Northern BC. In response, changes have been made to law, policy and procedure based on industry request.

6.3.5 Sub-strategy: Make Submissions to the Senate

In July 2010, MWC made a submission to the Senate Finance Committee regarding Bill C-9 and the amendments to the Canadian Environmental Assessment Act included in section 20 of the Budget Implementation Bill via web cast ("D"; Hart, 2010). http://www.miningwatch.ca/es/submission-senate-committee-national-finance-regarding-bill-c-9). Their goal was to add a new perspective, clarify issues and emphasize points raised by earlier presenters. The group wanted to convey to the committee the importance and status of federal environmental assessment, provide advice about mechanisms for improving federal environmental assessments and portray their concerns over increased confusion, politicization and the potential for delays that could arise due to changes to the scoping of projects ("D").

MWC described their past work at the federal Environmental Assessment policy level and project-specific level as Interveners and commentators on mine Environmental Assessments (B, D). They argued that they believed so strongly that environmental assessment was fundamental to responsible mining and other major development projects that they had put their NGO on the line by taking the Red Chris case all the way to the Supreme Court.

Recommendations were that the review of these issues would take place during the statutory review of the Canadian Environmental Assessment Act scheduled to commence in the fall of 2010, which would involve evaluations of the current EA framework, including both legislative and administrative changes (D, G). MWC encouraged the Senate to send the House of Commons a clear message that "proper democratic and fundamentally Canadian approaches should be used to address concerns about the EA process…by striking Section 20 from Bill C-9" (D). CEAA 2003 was repealed in 2012 and replaced by CEAA 2012 with far less opportunity for the public to comment on environmental issues of concern (A, B, C, D, G).

6.3.6 Sub-strategy: Participate in and Attend Parliamentary Hearings

Environmental groups participate in hearings in front of standing committees and in parliamentary reviews of the Canadian Environmental Assessment Act (CEAA) and have since its establishment. From its inception, the CEAA was a bipartisan effort with a multi-stakeholder Regulatory Advisory Committee that made expert recommendations on efficient functioning, additions and modifications to the Act (B, C, D, and G). It had been expected that the mandated review scheduled to commence in June 2010 would provide opportunity for NGOs to be involved in a democratic, inclusive, and comprehensive review that aimed to develop a world-class international model for an environmental assessment regime that Canadians could hold up as a model of environmental governance (D). NGOs had hoped for nationwide hearings as had been part of the process during previous reviews, such as discussions including the amendments implemented in October 2003 (C, D, and G).

After changes to the Canadian Environmental Assessment Act were announced in March, 2010, and prior to its scheduled review; national and regional environmental groups joined in Ottawa, testifying against the new amendments to the Act (D and G). The groups appeared as witnesses in televised proceedings of the Standing Committee on Finance, during hearings being conducted on Bill C-9 (D). Lawyers made presentations to the committee about the proposed amendments, commenting that they seriously weakened and eroded important environmental safeguards and did not adequately address the priority matters that required improvement to strengthen the Act; such as mandatory public participation and measures for government accountability (D, G). The groups indicated concern over the substitution of regulatory procedures for environmental assessment processes; the facilitation of "project-splitting" that would mean core components would escape scrutiny; resulting in diminished public participation rights (D, G).

Prior to this, there had been speculation that the government had been engaged in behind-the-scenes moves to make drastic changes to the Act, sparked by a 2009 leak of proposed legislation that would eliminate most requirements to carry out federal environmental assessments with several amendments aimed at speeding up decision-making and limiting public participation (D). The West Coast Environmental Law Association sent letters to the committee raising concerns about the process; objections were also raised by MWC (B, D).

The committee held nine quick hearings, some less than an hour long, offering witnesses only a few days' notice to prepare their presentations (D). Presenters were given only 10 minutes to present, there was no real opportunity to prepare comprehensive submissions or time for those participating to coordinate with each other regarding submissions (D). Hearings were only held in Ottawa, and not much effort was made to reach out to those heavily affected by environmental decisions, such as those living far from decision-making centers. This included indigenous populations living on remote reserves (D). Hearings themselves were described as confused, with witnesses asked to address the review process itself, resulting in submissions with much less substantive material due to the expectation that there would be other opportunities to make further presentations (D). Only those invited to appear were heard or those with knowledge of the hearings. Written submissions were allowed but there were no deadlines given. The period for written submissions closed with two days' notice.

In 2011, the mandatory Parliamentary review of the Act was terminated without notice. Committee hearings were cancelled without warning, and written submissions were no longer accepted. The House of Commons Environment and Sustainable Development Committee were told to enact legislative changes, implementing the new federal environmental assessment

requirements without completing the Review (D). Participants remarked that this process illustrated the challenges to democracy under the current governing regime (B, C, D, G).

6.4 Strategy 4: Increase Knowledge

This section will discuss strategies used by NGOs as a means to increase public knowledge so that decisions may be made that improve the quality of life for everyone. An informed public is better able to understand issues if they are openly and honestly informed about past mistakes and potential concerns, and possible alternatives, so that they can move forward in an educated and knowledgeable manner in order to make decisions. Increase knowledge includes sub-strategies including

Knowledge is built through effective thought and communication and could be considered a cornerstone of democracy, vital in creating change in an increasingly complex global society. An informed public is able to work together thoughtfully and coherently, making difficult decisions that are mutually beneficial. Through increased educational opportunities and greater access to information; interaction and understanding can be fostered between people of different ethnic, religious, and socioeconomic backgrounds, theoretically lessening the likelihood of cross cultural or cross regional conflict.

Increasingly, NGOs are expanding their audience by operating nationally and internationally, using various tools to foster an awareness of concepts such as individual and communal rights, the interrelatedness of man, culture and bio-physical surroundings (E). Organizations network together in ways to accommodate the widest spectrum of end user possible, utilizing teaching and learning methods pulled from many different models, incorporating ideas that might not initially seem related or logical (E). The ‘mind splat’ of information, the connectivity of people, and the rapid transfer of knowledge due to technological

advances has the ability of bringing people together, facilitating dialogue, and working collaboratively towards common goals. All NGOs in this study use various methods of increasing public knowledge. As derived from the interviews, this strategy had three sub-strategies:

- Build relationships
- Produce publications
- Engage at a grassroots level.

6.4.1 Sub-strategy: Build Relationships

All NGOs in this study work collaboratively, supporting one another, building relationships through networking and communication. Skeena Watershed Conservation Coalition (SWCC) work collaboratively with governmental bodies, First Nations groups and other NGOs. They analyze sustainability initiatives in other jurisdictions that have restored the ecosystem while saving tax funds, such as a project in Seattle that prevented flooding by restoring the natural ecosystem (H). The project cost a one-time fee of 3.6 million that saves 12 million per year in preventing damage due to flooding (H).

SWCC work with other NGOs to increase knowledge at all levels in order to increase sustainable development. An example of this is working with David Suzuki on Near Shore Ecosystem Valuation (http://www.davidsuzuki.org/publications/reports/2012/nearshore-natural-capital-valuation/).

SWCC work with First Nations groups developing cultivation baseline land use plans based on the notion that a project must be looked at in terms of all impacts, such as the impact of a project on particulates – how an increase in particulates will impact the healthcare system, such as a higher incidence of respiratory illnesses like Asthma. What impact will foreign workers

have socio-economically, such as the impact on the number of hospital beds compared to what is currently available? What impact will foreign workers have on prostitution - how many families will choose to send their teenagers to Vancouver to ensure their children aren't marginalized? What impact will this have on increased cultural disconnect from the land and their families of origin? SWCC look at the number of people likely to be marginalized and ensure resources are in place to mitigate or avoid the issue entirely. They build everything into the actual project cost. They look at sustainability in terms of analyzing change in either direction (degradation or improvement) by looking at "change indicators" in order to guide decisions based on impacts on land, water, social and economic capital compared to other possible projects and policy to ensure sustainability. They look at full-cost analysis; for example, if a mine goes forward and they lose the 110,000,000/ they currently earn annually selling wild salmon – "it's not 110,000,000 per year for 10 years or for 30 years, as a mine project will be – it's 110,000,000 forever" (H). They put values on projects that will ravage the natural landscape so that ACTUAL costs are factored in. There are lots of methods and frameworks available for full cost pricing – they just have to find one that works best for them in terms of where they live and what they do.

6.4.2 Sub-strategy: Engage at a Grassroots Level

Organizations try to engage early, at a community, grassroots level in order to collaborate, inform, educate, through means such as technical training, storytelling and participatory research procedures (All). The ultimate goal is to engage the entire community cohesively, inviting them to impart their wisdom, concerns and future hopes and work towards common goals (B, C, D, F, H).

Once the entire community became aware of the mine proposal, they sought answers from groups such as Environmental Mining Council of British Columbia (EMCBC and Friends

of the Stikine Society (FOSS), organizations working together collaboratively in providing mining impact assessment reviews, technical training, education, negotiation skills and policy development (B, F, E). These organizations work at a grassroots level in deliberating goals and priorities for communities, seeking to empower them by helping them identify their interests and needs (B, F, E). Listening and relationship building lies at the core of their work; through information-sharing, and knowledge transfer to ensure strategies chosen mesh with local priorities and traditions (F). They do not strategize as NGOs, rather they work at the invitation of communities alongside other NGOs in order to figure out what the community wants, what meets their needs now and in the future (F, E). They are not pro or con development and do not provide advocacy work (F).

EMCBC and FOSS have promoted awareness, provided research, and education about Northwest BC and the Southeast Alaska for 30 years (E, F), particularly the Stikine, Iskut, and Unuk watersheds (E). They work domestically and internationally, engaging at a ground roots level, paying attention to local issues and global processes to distribute information regarding ecology and humanity of watersheds (E). They collaborate with other NGOs, provide support and facilitate knowledge creation about ways of successfully engaging with very varied, multicultural and multileveled groups, Aboriginal communities and in conflict zones (E). FOSS attend seminars and workshops on analyzing group dynamics and issues faced in a group setting, providing an opportunity for people from diverse backgrounds and settings to brainstorm, taking in and imparting knowledge about working on the ground in conflict settings such as the Red Chris Mine dispute.

During the Red Chris Mine dispute, after the Occupation, EMCBC was engaged by the Iskut Nation directly to provide knowledge about the mining application process, help develop

negotiation skills, detail what technical issues are involved, help with land use planning decisions, and examine what long term cumulative effects of projects in the area were likely to be (F, E, B). The process allowed the community to be heard and voice their concerns; engaging in storytelling which allowed participants to talk about long term conflict and trauma.

Scientific facts were presented by EMCBC to the community by way of a non-advocate review. A report was produced detailing the community's concerns regarding the impact of the project. The community's main concerns were impacts on water, fisheries and wildlife; appropriate, meaningful consultation and accommodation; derive economic benefit from the project, have access to skilled jobs training, with concerns addressed over the impact of foreign miners on their communities. They wanted recognition of their cultural values, benefits from new infrastructure and involvement in future mine remediation.

A participant spoke about attending a function during the Occupy, Moratorium, Blockade events held in Tahltan traditional territory described a conversation when a Tahltan Elder approached him wanting to talk about acid rock drainage – he felt that engaging at a grassroots level had been effective in knowledge transfer by helping the community understand what sort of development they wanted on their land to meet their current and future needs (E).

6.4.3 Sub-strategy: Produce Publications

All the NGOs involved in this study work to increase awareness, and increase knowledge in various ways, such as by releasing publications, reports, information on their websites, using social media, official news releases, lectures, videos, and documentaries.

For example, Skeena Watershed Conservation Coalition released a report in 2012, entitled *"Mining's Promise in Northwest BC? Lasting impacts of past producing mines and major exploration sites on northwest BC watersheds"*. The report identifies key areas of concern

in mining practices, such as Environmental Bonding, Water Quality, Cumulative Impacts, Human Resources, Access to Information, Economic Development and Ethnology and Culture (H).

Similarly, Fair Mining Collaborative released a report in 2013, produced collaboratively with a diverse, international group called, "*Fair Mining Practices: British Columbia*" (E). The report is intended to provide some structure for First Nations in developing their own mining policies (E). The goal was to inspire and inform communities, local and provincial governments and the international community about best mining practices with information gathered from around the globe (E). The document details a process of engagement for First Nations in the provincial Environmental Assessment process, to provide a resource guide itemizing the best international mining practices that First Nations can refer to when they decide what rules they want incorporated into treaties, Impact Benefit Agreements, land use plans, land use codes, and other alternative dispute resolution processes (E). Fair Mining Collaborative also launched a website in May 2013, with information on procedures and processes involved with mineral exploration, facilitating knowledge creation: http://fairmining.ca (E).

6.5 Strategy 5: Network with Others

Networking was found as an essential strategy used by all NGOs given the extremely limited sources of funding, particularly after changes made to the CEAA in 2012.

The Canadian Environmental Network (RCEN) was established in 1977 as an independent, non-partisan organization facilitating networking among groups interested in the protection, preservation and restoration of the environment and the promotion of environmentally healthy, sustainable ways of life (http://rcen.ca/home). RCEN provided the federal government with "world-recognized consultation" services" and was a primary point of

reference for 640 small groups like MWC in facilitating communication, discussion and strategy (D). The group also provided funding to sustain regional affiliates (D). The group provided advice to Ottawa on research findings, and had helped craft important environmental legislation, including the Canadian Environmental Protection Act (B, C, D, G).

In May 2011, the RCEN were told that federal government was expecting to renew its $547,000 budget for another year (D). In October 2011, all funding was cut without notice (D). This resulted in RCEN laying off its entire staff (D). If the group had known their funding was to be cut, they would have looked for other sources of revenue, which they have since done and continue to operate (D).

6.6 Conclusion

This chapter showed the various strategies used by the NGOs in this case study. Four main strategies appeared to be used by NGOs in the study and each main strategy, in turn, had sub-strategies. The four main groups were ‘Create Emotion’, ‘Legal’, ‘Challenge and Inform Government’ and ‘Increase Knowledge’. Some use all of these strategies but not all. Common to all groups was “Increase Knowledge”.

CHAPTER SEVEN: DISCUSSION AND ANALYSIS

7.0 Introduction

The purpose of this chapter is to interpret and describe the significance of what was known about the connection between environmental health, democracy and the role played and methods used by NGOs in ensuring human rights standards are observed. The study used a transformative approach to investigate the importance of groups and civil society in bringing attention to current environmental, political, social, and economic conditions that make the existing system unsustainable (Folke, Carpenter, Walker, Scheffer, Chapin, & J. Rockström, 2010).

7.1 General Analysis of Relationship between Literature Review and Interview Results

This investigation used a case study method of inquiry to analyze a Supreme Court of Canada decision, MiningWatch Canada (MWC) v. Canada (2010 SCC 2), known as 'Red Chris' to examine strategies various groups used to increase public participation in environmental decision-making, both short and long term. The Supreme Court ruling came down in January 2010, finding in favor of participatory rights under section 21 of the 2003 Canadian Environmental Assessment Act. Section 21 dealt specifically with the right of the public to participate in environmental assessment as a means of providing checks and balances in environmental decision-making to avoid degradation and ensure sustainability of projects (S.C. 2003, c. 9).

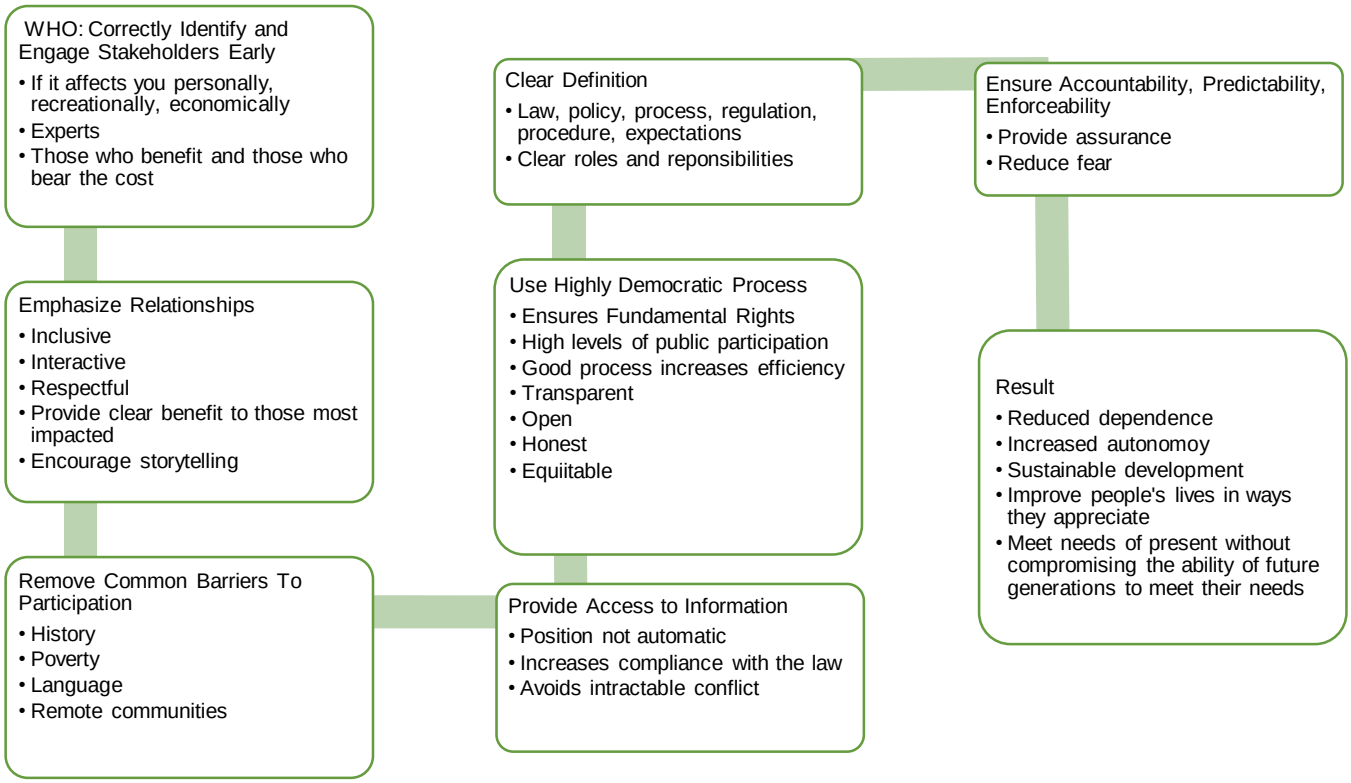
On March, 29, 2010, changes to section 15 and section 21 of CEAA were announced, directly circumventing the ruling of the Supreme Court of Canada in MiningWatch Canada v. Canada (Department of Fisheries and Oceans) from January, 2010 (A, B, D and G; Driedzic

&Bowman, 2010). The amendments were buried in Bill C-9, the Budget Bill with over 2,200 sections; avoiding public scrutiny and Parliamentary debate (B, C, D, G; Driedzic &Bowman).

The interview findings support data from the literature review; that public participation is essential in the creation of a transparent, open and just society as a means of ensuring all generations of human rights are protected. Findings also support that depths of democracy are constantly evolving, a dynamic that requires active involvement on behalf of citizens to ensure social progress.

Study participants were asked if dispute resolution methods had been used with the Red Chris conflict, with most participants mentioning that dispute resolution was not used often in environmental conflict. Interestingly, every single factor identified by participants as ways of avoiding conflict were methods used in conflict resolution or prevention processes that were included in the 2003 CEAA, also conflict prevention procedures mentioned by scholars in the review of literature. This included correct identification of who should be part of decision-making processes, relationships building with the community impacted by engaging early, using open and transparent processes. Similar to academics, all participants talked about processes that use wide participation, with multiple sources of unbiased information as essential, including the removal of any barriers to participation clearly defined law, policy and procedure, which provides predictability and reduces fear by ensuring monitoring and enforcement. Figure 1 issues identified by scholars and participants as ways of avoiding conflict.

Figure 1: Conflict Avoidance



This investigation focused on the strategies used by NGOs to increase public participation and challenges they face due to neoliberal policies, as described in interviews and supported through literature. “Neo-liberalism wages an incessant attack on democracy” (Giroux, 2004, para. 2), a position supported in this research. These challenges include the increasing difficulty accessing unbiased information, lack of transparency, deregulation or regulatory discretion, as well as hierarchical, competitive decision-making processes. Academic literature additionally found that neoliberal ideals increase the opportunities for corruption; seen when there is increased time spent between industry officials, corporate heads, politicians and bureaucrats, alongside corporate interest groups so powerful they influence law, policy and influence political campaigns (Dahl, 1987; Susskind & Cruikshank, 1987; Grant, 2003; Clark, 2002; Chomsky, 1999; von Welhof, 2008). All of the problems listed above were identified in

this research as being present with the Red Chris mine conflict, impacting the ability of NGOs and the public in general to participate in environmental decision-making.

Access to unbiased information was also mentioned by participants as essential; otherwise what differentiates "news" from propaganda? "Where you get your information is so important" (G). Control of the press is said to be one of the greatest signs of an autocracy, posing enormous threats to democratic values (Roberts, 2014). Indeed, signs of a media oligarchy in Canada can be seen by a rapid decrease in independently owned Canadian daily newspapers, with 17.3% of Canadian daily newspapers independently owned in 1990, reduced to 1% by 2005 (McCurry, 2010). Concentration of media ownership in Canada for the TV industry has been criticized as the worst in the G8 (Tencer, 2012), with critics arguing that a few large companies, such as Bell, Shaw and Rogers, control content and distribution. A report by a Boston-based Analysis Group reports that 81.4 per cent of the value of Canada's TV distribution (cable and satellite) market is controlled also creating content, such as broadcasters and production companies, the highest percentage in the G8 (Tencer). This can be compared to Japan, the second place country, with 37.5% of its TV distribution controlled by content creators and the US at 23.1 per cent (Tencer).

An example of "news propaganda" can be seen in a strategic alliance between Postmedia and the Canadian Association of Petroleum Producers (CAPP), announced at a Prezi presentation in 2013, the same day that Postmedia downsized its parliamentary bureau in Ottawa and laid off prominent environmental journalist Mike De Souza and political reporters Andrea Hill and Tobi Cohen (Uechi & Millar, 2014). The Postmedia partnership provides sponsored energy content with topics directed by CAPP and written by Postmedia in 12 major newspapers including The National Post, Vancouver Sun, Calgary Herald and The Times Colonist (Uechi & Millar, 2014).

CAPP would not disclose the cost of the partnership with Postmedia only that it was 100 per cent paid for by members (Uechi & Miller). Paid advertisements for the oil industry have run in Postmedia papers, appearing as editorial content on the websites of the Vancouver Sun and Regina Leader-Post.

A story published on the Vancouver Sun's website on December 4, 2013, claimed that Canada was losing $50-million a day due to limited export markets (Linnitt, 2014). Economist Robyn Allan read the article and took issue with the economic claim, and wrote an opinion piece in response (Linnitt). Allan was informed the article couldn't be run because the article she was responding to was actually a paid advertisement.

Both participants and document analysis identified problems related to the increased difficulty the public has accessing unbiased information about the environmental effects related to metal mining, both in gaining access to results of monitoring data, as well as concerns about enforcement (B, D, G; Petition 334, Auditor General of Canada, 2012 http://www.oag-bvg.gc.ca/internet/English/pet_334_e_37109.html). The public faces increased difficulty accessing scientific information about environmental issues in Canada, due to Media Relations policy implemented by Environment Canada in November, 2007, stating that "subject matter experts" working for Environment Canada will only be interviewed following consultation with Media Relations Headquarters. Environment Canada routs all media requests, including interviews with Environment Canada scientists, through media relations; only information about the weather is allowed without consultation with the Minister's office. Any queries about policy relating to climate change, wildlife, water quality and supply, governmental processes, including calls from the Press Gallery reporters or major news outlets now require Privy Council approval.

A lack of transparency and projects that benefit industry but do not appear to be in the public interest - when there is a cost to many with benefit to few, it is an indication of neoliberal ideals. Study participants mentioned the construction of the Northwest Transmission line (NTL) as a process lacking transparency and benefiting industry over the public interest, given that no cost benefit analysis was done on the NTL or the extension, which were exempted from a B.C. Utilities Commission review designed to ensure the costs are in the public interest (B, E, H, I; Davis, 2014; Pollon, 2013). When the BC government was asked by Rivers Without Borders for basic background information with respect to the project, they were sent a document consisting of 76 blank pages, along with five emails that were almost completely redacted (B, E, H; Richards, 2012).

Regulatory discretion was mentioned by all participants and backed up through document review as increasing the perception and opportunity for corruption and decreasing the ability of the public to participate in environmental decision-making. Regulatory discretion was greatly increased with changes made to CEAA in 2010, immediately after the Red Chris SCC which gave the Minister complete control over project scope and level of assessment. The omnibus budgets of 2012 increased regulatory discretion by giving power to Ministers to approve projects regardless of their socio-economic or cumulative impacts. Changes to the Fisheries Act in 2012 granted new regulatory powers to the Minister of Fisheries and Oceans, allowing the Minister to make regulations allowing the disruption killing of fish or serious harm to fish. Projects regulated by the National Energy Board and the Canadian Nuclear Safety Commission gave increased discretionary power to the Cabinet, allowing it the ability to overrule both the Canadian Environmental Assessment Agency and the National Energy Board. In Bill C-38, the National Energy Board (NEB) absorbed the Navigable Waters Protection Act (NWPA),

providing Ministers and Cabinet complete discretion over projects. All of the above changes reduced the ability of the groups and the general public to participate in decisions involving the environment.

The literature review found that meetings conducted behind closed doors were a sign of the subjugation of democracy. Study participant D said in August, 2012 that there had been a leaked document in January 2009 indicating the federal government was developing radical legal and policy changes to CEAA behind closed doors (Rutherford, Susan, WCEL). The changes made to CEAA in the aftermath of the Red Chris decision, followed by the repeal of CEAA in 2012, greatly reduced the ability of civil society to participate in discussions involving the environment (A, B, C, D, G). Additionally, there were closed door meetings with mining industry representatives held at the Munk Center in 2007 that replaced the government's own Advisory Report recommendations on Corporate Social Responsibility initiatives (B, February, 2014; Coumans, 2011).

The review of literature showed that democracy is challenged when there is the appearance of bureaucratic corruption. In this study, several participants mentioned corruption on behalf of senior bureaucrats involving missing DFO documents related to the reduction of the level of environmental assessment for Red Chris mine, the impact of which was the elimination of mandatory public participation in the scoping and assessment of the mine. The missing documents were referred to in the Federal Court ruling on Red Chris in 2007, with Justice Luc Martineau ruling that, "the process followed by the mining company and the regulators was "an evasion of a Comprehensive Study [that] had all the characteristics of a capricious and arbitrary decision which was taken for an improper purpose" (B; Milewski, 2008; 2007 FCC 955). Justice Luc Martineau also found the officials had "committed a reviewable error by deciding to forgo

the public consultation process which the project was statutorily mandated to undergo" (2007 FCC 955, p. 116; Milewski).

Tyranny of the minority as described by academics and one study participant related to the Red Chris mine itself, with very few beneficiaries of the mine living within its environmental footprint and subject to the impacts of the mine (Participant B, February, 2014).

Review of literature found that there is a crisis in governance when unelected heads have a tight grip on political parties with the ability to influence the outcome of political campaigns as well as unequal access to powerful politicians and bureaucrats and when the government itself is a party to the dispute. Participants described the Red Chris mine case as a 'public interest case', which demonstrates government and industry in a lawsuit together against the public interest, showing government unable to address a dispute satisfactorily because it was itself a party in the dispute (A, B, D, G). This was described by Susskind and Weinstein (1980) as demonstrating the vitality of our political institutions reduced due to the fragmentation of political parties into shifting alliances that do not so much govern, rather they react to the pressures of interest groups and other organized constituencies (p. 312).

When governments do not govern, but react to pressures of interest groups, there is a crisis in governance. This was demonstrated by changes desired by the mining industry to the CEAA 2003 immediately after the Red Chris court decision, with the removal of Section 21. It can also be demonstrated with the repeal of CEAA 2003 and replacement of CEAA 2012 which was done without public participation and greatly reduced the ability of the public to be involved in environmental decision-making.

Triangulation of data found the influence of industry on legislation and policy demonstrated by the strength of the mining lobby regarding Bill C-300, changes to the Fisheries

Act, National Energy Board and Species at Risk, which additionally reduced the ability of the public to participate in matters involving the environment. Kirkby similarly found that the pipeline industry had held meetings with government officials with formal requests for specific changes weakening the same environmental legislation implemented in 2012 (Kirkby, 2014, p. 37; Schofield, 2013).

Other signs of the strength of the mining lobby are the tax incentives for business with mining firms enjoying a lower marginal rate for taxes and royalties than for non-resource companies, with generous corporate income tax and write-offs provided for certain expenditures such as exploration, development and processing mining assets (Participant B, February, 2014; Mintz and Chen, 2013, p. 1). British Columbia, has a marginal effective tax rate (METRR) of minus 9.0 per cent for the mining industry, imposing the lowest effective tax rate on mining investment among the nine provinces (Participant B, February 2014; Mintz and Chen, p. 7).

Indications that industry is involved in the political process can be noted during the 2013 provincial election, with the BC Liberal government polling behind the B.C. New Democrats. Murray Edwards, the majority shareholder of Imperial Metals, hosted a private fundraiser for Premier Christy Clark at the Calgary Petroleum Club in Alberta, bringing in $1,000,000 for her campaign (Davis, 2014; Sinoski, 2014). Imperial Metals owns both Red Chris and Mount Polley mines. Murray Edwards is Canada's 18th richest man, an oil patch billionaire and chairman of Canadian Natural Resources (Davis, 2014). Edwards is linked to six corporations that have donated a total of $436,227 in campaign contributions to the B.C. Liberal party over the past nine years, according to Elections B.C. The Red Chris mine is currently the only industrial project aside from Forrest Kerr to benefit from construction of the Northwest Transmission Line (Davis, 2014).

Academic literature found that democracy is challenged when the public is restricted from involvement in policy discussions and there are hierarchical competitive decision-making processes. Participant interviews supported this argument, with all mentioning a change in their ability to contribute to discussions after changes to CEAA occurring in 2010. Compared to an open and inclusive, lengthy process prior to the implementation of the 2003 CEAA, in bi-partisan process, the same groups had no ability to take part in discussions prior to the repeal and implementation of CEAA 2012. This was also true of the process leading up to changes to Fisheries Act, changes to the Species at Risk Act, changes to the Metal Mining Effluent Regulations (MMER) and changes to the National Energy Board in 2013 that greatly restricted who can participate in environmental decision-making (A, B, C, D, E, G).

Public apathy provides great challenges to levels of democracy. The OECD considers high voter turnout as a measure of public trust in government. In the most recent elections for which data is available, voter turnout in Canada in 2008 was the lowest voter turnout on record, at 58.8%, significantly lower than the OECD average of 72% (Elections Canada; OECD Better Life Index).

NGO apathy is hugely damaging to democratic forms of government. One participant (D) in this study mentioned that; "most of the large environmental NGOs left Ottawa – feeling there is nothing useful they can do for the next couple of years due to C-38, but also due to the 'general disdain of the Harper government for the public at large and towards environmental organizations in particular".

Interviews supported document analysis, finding that the public is facing increasing challenges participating in matters involving the environment due to law, policy, and unequal

access to justice. There are increased administrative hurdles getting public interest arguments into court as well as accessing funding.

B.C.'s provincial government appears to be following the federal government's example, making it difficult for NGOs to operate provincially. The government has proposed an overhaul of the Societies Act, including Section 99b that will allow any person (including corporations) to take any registered society to court if they believe they are acting contrary to the public interest, giving a "legal hammer" to any corporation, tying environmental non-profits up in court for years, inviting "harassment of societies by any deep-pocketed and litigious opponents" (Wescoast Environmental Law; McLeod, 2014; Stueck, 2014).

The literature review found that democracy is challenged when the government lacks the capacity or desire to uphold the law, as demonstrated by the Red Chris environmental assessment process. All participants said the court case would have been avoided if the government had 'observed its own law' by conducting a comprehensive environmental assessment. Participants also said "if something is illegal, the government changes the law" about the changes made to CEAA immediately after the Red Chris court case, with the removal of Section 21 from the Act (A, B, D, G).

All but one participant mentioned governmental desire to show industry an "open for business" climate, seeking to publicly promote compliance with environmental and engineering standards but doing little to force companies into concrete action in a timely way (Ramsay, 2014).

All but one participant mentioned issues resulting from a lack of monitoring and enforcement, resulting from governments that are overcapacity, lacking both human and financial resources to enforce environmental standards. This was supported through findings

showing in 2010, a reorganization within the B.C. government that led to a drop in the number of monitoring of tailings dams at provincial mines (Hunter, 2014; Hunter, Hume & Givetash, 2015). In 2010, there was a huge crack reported in the dam at the Mount Polley mine (Red Chris's sister mine) during a year in which governmental geotechnical engineers conducted only three inspections in BC, down from 22 the year before (Hunter). The B.C. Ministry of Environment had issued 5 warnings to Imperial Metals for failing to report issues with Mt Polley's tailings impoundment that allowed the water level to go higher than was approved, with no resulting charges and no public disclosure until after the tailings breach, with the public announcement a week after the breach (Hunter). The B.C. government appears to have systemically breached its freedom of information law by withholding information related to the collapse of the tailings dam at the Mount Polley mine, environment lawyers say (Hunter). The province has refused to provide recent inspection reports related to the tailings pond, saying such information may undermine any one of three investigations to determine why the dam failed on August 4, 2014, sending a torrent of toxic waste and debris into surrounding waterways (Hunter).

An audit by B.C.'s Auditor General in 2011 found that BC's Environmental Assessment Office was not doing an adequate job monitoring compliance at mines, power plants, big tourist resorts and other major projects (Office of the Auditor General; G, H). The Auditor General said oversight wasn't sufficient to ensure compliance and enforcement in the prevention of significant adverse impacts (Office of the Auditor General). He also found that information provided to the public was not adequate to ensure accountability (Office of the Auditor General). MiningWatch has made many complaints about the lack of publicly available information about results of monitoring (B; MiningWatch Canada, 2012; Office of the Auditor General of Canada, 2012).

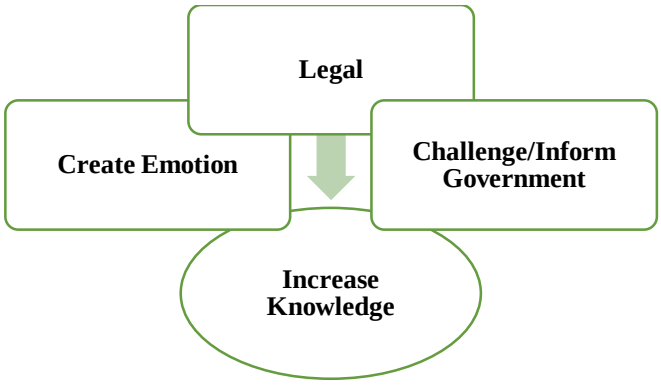
7.2 General Discussion and Analysis of the Interview Results

The purpose of this section is to identify the major methods used by the NGOs in this study and the way each method impacted public participation as noted by study participants with examples provided through literature and previous studies. This section will also describe challenges currently faced by NGOs participating and illustrate the subjugation of democracy as well as the politicization of the regulatory process.

During the interviews, participants identified methods they used to increase public participation, their impacts and the challenges they currently face being included in discussions about law, policy and procedure in environmental management.

The three main groups of strategies were: 1) Creating an Emotional Response; 2) Legal; 3) Challenge or Inform Government; with Increase Knowledge used by all NGOs in this study. Figure 2 shows the groups of strategies used in this investigation.

Figure 2: Strategies and Methods Used by NGOs



Creating Emotion did not appear to be as reliant on the political economy as other strategies, although, like other strategies, issues must be kept in the public eye in order to be effective (G). For example, although Klabona Keepers blockades were effective in 2005, the society continues their opposition to the project, particularly in light of the Mount Polley tailings failure in 2014, erecting a blockade immediately after the failure (McKenna, 2014). In response,

Imperial Metals sought, and was granted an indefinite injunction by BC's Supreme Court (Mesec). A third party review of Red Chris' tailings dam was completed in October 2014 by consultants retained by representatives of the Tahltan Nation, with plans for the recommendations to be implemented underway (Imperial Metals).

Challenge and Inform Government seemed to be reliant on the political economy, in this case, with industry having a great deal of control over the federal government with regards to law, policy and procedure, including limiting the ability of NGOs and the general public to participate in decisions involving the environment. Groups continue to ask to be heard on issues involving public health related to environmental damage but remain challenged getting anywhere with governmental bodies (Castrilli & Tessaro, 2014). As a result, lawsuits are the way environmental groups are proceeding, with legal NGOs representing other major environmental NGOs in court (Ecojustice, 2014; Tessaro, 2015).

Initially, interviews, supported by documental evidence, found that Increase Knowledge as a strategy was somewhat independent of the political economy, however due to recent CRA audits and fears over having government funding pulled, groups are now challenged networking with one another, are additionally careful with communications and with the way they disseminate information (Participant B, February 2014; Kirkby, 2014; LaForest, 2012). Groups working at a grassroots level seem to face less governmental opposition, as well as publications released that are educational in nature. Political advocacy or advocacy in general, is seen increasingly as a political activity inviting scrutiny on behalf of governmental officials.

7.3 Democracy, NGOs and the Political Economy

As noted, environmental NGOs have faced increased hurdles over the last few years being included in discussions involving law, policy and procedure in environmental decision-

making. Recent studies have found evidence of Canada's democratic process being corrupted by governmental bodies, in particular with regard to civil-society organizations whose public policy ideas differ from governmental priorities (Kirkby, 2014; Phillips, 2013; LaForest, 2012). Studies have found that NGOs critical of governmental policy have been cut out of participating in policy discussions, with funding sources drying up, "muffled" or "silenced" by the federal government (LaForest, 2012, p. 19; Kirkby, 2014, p. 23). This study supports these finding, although interviewees in this study were more inclined to say that there were no opportunities for any groups to be part of the policy-making process, that decisions were made behind closed doors between industry leaders, a very strong mining lobby, corporate heads and those in governing roles. This supports a neoliberal theoretical paradigm, reinforced in review of documents.

Recent studies have also found that groups have faced 'rifts' caused between government funded organizations, fearing governmental retribution if they speak out in support of other NGOs that have been cut off of funding (LaForest, 2012, p. 190). The affect is a restriction on the ability of NGOs to network with one another, provide forums, enhance and transfer knowledge and share innovative ideas, all of which were found in this research as crucial to the way NGOs operate in areas of social justice.

In addition, environmental groups have been demonized in the media. In 2012, the Public Safety Minister indicated that Ottawa regards environmental organizations as adversaries to be monitored and battled, rather than well-meaning advocates to be consulted (McCarthy, 2012; Kirkby, 2014). In May 2012, the Environment Minister claimed that some charitable environmental groups in Canada were "laundering" funds from offshore donors to obstruct Canada's environmental assessment process (CBC, 2012). Participants interviewed in 2012 felt

that these sorts of declarations could anger the public enough to increase donations to environmental charities, which is supported by Kirkby's findings (2014, p. 42). Participants in this study also felt that foreign donors do not listen to government rhetoric about who they are going to fund.

Groups appear to be silenced by CRA audits on charities. Since 2012, the federal government has allocated almost $14 million to the CRA to audit charities, ostensibly to investigate if groups claiming "charitable status" are using donations for political activities (Derochie, 2015). Having "charitable status" means organizations are required to be non-partisan and must limit political activities to 10% of their resources. Charitable status is vital for fragile NGOs competing for very limited funding (G), with Canadian environmental charities receiving less than 3% of charity giving (Kirkby, 2014). Interviewees in this study in 2012 said this might ensure charities took extra care to be clear about funding and political activity, and although the audits could create a "chill" (A, June, 2012 and E, October, 2012), with all study participants noting that groups go nowhere near the allowable 10% limit.

Groups under audit have been required to turn over emails, memos, letters and a range of other internal documents on threat of losing their charitable status (Beeby, 2014). Audits have been "highly intrusive—requesting information that has no discernible relevance to an organization's charitable activities" (Robertson, 2014). Audits are a means of providing distraction and financial burden to those under audit (Kirkby, 2014; Robertson, 2014), or concerned about being audited, demonstrating the politicization of regulatory bodies (Phillips, 2013). This also illustrates an uneven playing field when compared to the amount of money available to industry groups and corporations for self-promotion, advertising campaigns and stifling dissent through the courts. For example, while tiny NGOs with limited funding sources

are under audit, the federal government lays off international tax auditors specializing in investigating the tax avoidance strategies of 1-per-cent-ers and corporations, with tax dollars lost to the public treasury estimated in the multi-billions (Caplan, 2014).

In February 2014, there were seven prominent environmental NGOs under audit, including The David Suzuki Foundation, Tides Canada, West Coast Environmental Law, The Pembina Foundation, Environmental Defence, Equiterre, and Ecology Action Centre (Solomon, 2014). Environmental Defence had its charitable status pulled by the CRA and is appealing the decision (Solomon). Environmental Defence, has spent an estimated $100,000 on related legal bills and remains under audit (Beeby, 2014). Previous studies show NGOs being slowly drained of cash for legal and other costs, and fear speaking out (Kilpatrick, 2014). The audits on non-profits are described as unprecedented, a 'bullying' tactic (Beeby). Sierra Club Canada (Ecojustice) is not currently on the audit list, but is prepared for an audit (Solomon & Everson), having released its own independent audit report for years ending in 2012 and 2013 in accordance with Canadian accounting standards for not-for-profit groups (Ecojustice, 2013).

In comparison, the Fraser Institute, a right-wing think tank with charitable status, described as Canada's most intensely political organization, with a total revenue of 8.9 million in 2013 claimed 0% of funding is spent on political activity (Broadbent Institute, 2014). The same is true of right wing think tanks, the McDonald-Laurier Institute as well as the Montreal Economic Institute, both also claiming 0% spent on political activities (Broadbent Institute).

There have been a significant number of complaints about the investigation of charities with Ministerial correspondence documents released to DeSmog Canada showing public opposition to the CRA and the Prime Minister's Office, comparing the initiative to a "witch hunt," "a wild goose chase," a "crackdown…limiting free speech," in an effort to silence those

who can't speak for themselves, polariz[ing] the potential for public debate" (Linnit, 2014). More than 400 academics have demanded a halt to the CRA audits, saying that the federal government is trying to intimidate, muzzle and silence its critics (Beeby, 2014). The group defends the Canadian Centre for Policy Alternatives, a left-leaning think-tank targeted for a political-activity, saying the centre is internationally respected and conducts fair and unbiased research, and although it has frequently criticized government policies, that does not make it a partisan organization (Beeby). The group has called for a moratorium on CRA audits until the tax agency adopts a neutral and fair selection process (Beeby).

Recent studies have found that environmental NGOs are said to be consciously choosing to keep a low media profile on issues that they normally would have directed public attention toward, also pointing to a democratic deficit (Kirkby, 2014, pp. 8-11; LaForest, 2012, p. 181; LaForest, 2011, p. 130; Phillips 2013, p. 900). This study supports those findings, with participants remarking that democracy is under threat in Canada, with NGOs shut out of participating, and increasingly careful about communications (Participants: D August 2012, G February 2013 and B February, 2014). The impact has been fear and reduced dialogue among NGOs, resulting in no innovative solutions for complex problems, no "marketplace of ideas", which holds that solutions can be found through the competition of ideas in free, transparent public discourse.

As a result, groups are now considering 'abuse-of-power' court challenges or Charter of Rights challenges jointly with other groups (Kilpatrick, 2014). Likewise, Lawyers' Rights Watch Canada submitted a complaint to a United Nations group about what it calls the "shrinking space for dissent in Canada" (Beeby, 2014).

7.4 Gaps and Limitations

Gaps and limitations in this study include replicability, with NGOs strategies constantly evolving dependent on the political economy. During interviews, participants mentioned possibilities for future strategies, including looking at transboundary pollution as a way to enforce environmental protection (D, August 2012) as well as pursuing the 'right' to a healthy environment, with groups dedicated to using the court to add this right to the constitution (G; Ecojustice, 2014).

Other limitations are that it is impossible to predict conclusively what connections there are between levels of democracy and environmental degradation in Canada due to the fact that changes to environmental law and policy in environmental assessment that preclude public participation are unlikely to be known for years or even decades. With the Environmental Performance Index placing Canada low on the index, at 71/178 countries related to fisheries (Environmental Performance Index, 2014), the impact of recent controversial changes to the Fisheries Act in 2012, said to be requested by industry, will not be known for years. The 2012 omnibus budget bills limited the scope of the legislation governing the protection of fish and their habitats, with some ecologists saying the changes were the biggest setback to conservation law in more than 50 years (Galloway, 2013).

There are alternative explanations about governmental motivation in reducing the ability of NGOs to participate in discussions about the environment. While there have been restrictions to the routes available for associational networks across the voluntary sector, with the ability for citizens to act collectively in traditional forms of political representation diminished since the 1990's, there have been increased opportunities for individuals to engage directly in policymaking (LaForest, 2012, p. 181-182). This is in sync with neo-liberal values with individualism being preferred over collective action. Funding cuts to advocacy programmes shut

down many advocacy organizations that had formerly played a significant role in the policy process (LaForest, p. 188). Instead, it was felt that direct engagement could produce better policy – in line with Dahl's theory of direct democracy compared to representative democracy.

I find that although there may be increased opportunities for citizens to engage in policy directly, again, challenges exist as described by participants during interviews, "to be part of a process you have to know it exists" (G). For example, there is a website called 'Consulting with Canadians' allowing citizens to comment on policy initiatives – but to take part in consultations, you must know the opportunity exists. Indeed, LaForest (2012) argues that citizen-engagement experiments such as 'Consulting with Canadians' have mainly focused on monitoring, performance and accountability, with limited possibilities for meaningful interaction between state and citizen on policy initiatives (p. 192).

Munz (2006) found that political activists often belong to homogenous social networks, countering what deliberative theorists believe essential in discursive democratic procedures (pp. 9-10). Munz (2006) argues that the best environment for cultivating political activism is when likeminded people spur each other into collective action. Through this lens, the federal government's desire to shut down groups with likeminded people working together indicates a government that does not seem interested in social progress – one that discourages debate, making it difficult to find innovative solutions for complex problems.

7.5 Conclusion

The federal government's demonization of NGOs in the media, the politicization of regulatory bodies, and funding cuts related to organizations that have been critical of governmental policy - particularly environmental groups – are out of line with the democratic traditions of the country. This study shows that decisions have been made based on neoliberal

ideals that have provided significant challenges to democracy and public participation in Canada. Chapter eight will provide a conclusion for this study, including suggestions for future research.

CHAPTER 8: CONCLUSION

8.0 Introduction

Chapter 8 offers concluding remarks on the strategies and tactics used by NGOs, their goals, factors that impact the success of a particular organization and issues that provide challenges. The chapter will also discuss the implications and significance of this study as well as present suggestions for future research in this area.

8.1 Looking Back

This study found that there are strategies used by all NGOs in order to work together and enhance knowledge transfer as well as other strategies specific to the kind of NGO and their goals. NGOs push for greater public participation in order to enhance human rights, with the ultimate goal being conflict avoidance through better communication, open processes, increased knowledge and by building strong relationships. Interviews found that if the social license to operate was achieved, the chance of conflict was drastically reduced.

Findings show NGO success as dependent on both external and internal factors, including the relationship between actors, such as the relationship between government, industry and NGOs. Other factors include outcomes of previous campaigns, access to media, the kind of media coverage, law, policy and regulation determining the way NGOs can operate, which can depend on the political economy of the time. Factors influencing success include competition with other NGOs over funding, innovative ideas to attract funding, accessing and increasing an audience, concepts and ideas about the best way for the NGO to move forward, staff expectations, and government aid.

8.2 Implications and Significance of the Study

This study is unique in that it uses a specific conflict and analyzes it to find out how the conflict might have been avoided. It also analyzes strategies and methods used by groups involved at some point in the conflict to increase public participation in environmental decision-making as a means of mitigating conflict and rights abuses. The investigation began when the NGOs involved in the study became involved in the case and charts interactions between NGOs themselves as well as between NGOs and governments at various levels in the years since the Supreme Court decision about Red Chris. The study also investigates the changes that have occurred to law, policy and regulatory procedure in the interim and what impact changes have had on the ability of groups of citizens and individuals to participate in matters involving the environment related to neoliberal ideals. As a researcher, it has been somewhat shocking to witness the relatively quick devolution of democracy in Canada over the last 5 years.

8.3 Suggestions for Future Research

This section will explore ideas for future research involving NGOs. Future research could investigate *how* NGOs measure success instead of *whether* they were satisfied by a particular outcome. Research could investigate comparative case studies studying public interest cases brought before the court by Ecojustice or other legal NGOs on behalf of other Non-Governmental Organizations, such as with the recent Federal Court ruling on Species at Risk brought by Ecojustice on behalf of other NGOs, comparing strategies used by various groups and their impact (https://www.ecojustice.ca/media-centre/press-releases/environmental-groups-declare-victory-in-endangered-species-protection-case). The evolution of the pesticide case currently being litigated by Ecojustice lawyers on behalf of other environmental organizations could be investigated.

There are currently a large number of cases before the Federal Court about constitutional issues, many related to the CRA audits that have been said to limit the freedom of speech. There is also a case in front of the Federal Court of Appeal about the increasing difficulty faced by the public in participating in environmental decision-making due to the National Energy Board (NEB) project review process. The NEB dismissed a constitutional challenge to both the National Energy Board Act and the Board's proceedings about the NEB pipeline review process. The applicants are a group of landowners, business people, academics and environmental advocates seeking an interim injunction prohibiting the NEB from continuing the review process pending the outcome of the legal challenge. The group asserts that the NEB pipeline review process restricted public participation as a result of process design including the rejection of participant applications, the complicated nature of the application process and their refusal to hear concerns related to climate change or oil sands development. "The NEB is the only forum for public input and Canadians are being silenced" (activist Tzeporah Berman). These actions seem to set the judiciary up as lawmakers in matters ordinarily addressed by the legislature. Research could center on connections between styles of governance, the impact on public participation and how often, historically, the judiciary has been called upon by groups interested in ensuring levels of democracy are maintained in order to ensure human rights issues are addressed. Do hierarchical styles of governance tend to increase judicial activism to address rights issues brought in front of the courts by citizens concerned about public participation as a means of addressing human rights issues?

Participants commented that if the government shut down comment, debate and dissent, the result could be a revolution. What has happened to the funding of NGOs

between 2010 (when changes were made to CEAA 2003 limiting public participation) and 2015? Has public funding for NGOs gone up due to concerns over reduced opportunities for public participation and challenges to democracy, or has it gone down due to the corporate media reports demonizing environmental groups as 'fear mongerers' or 'groups operating against the public interest'? If NGOs have seen changes to funding after changes to environmental policy by provincial and federal governments after 2010, to what do they attribute the increases or decreases?

Do some environmental NGOs exist solely as a means to fundraise? What is the group's language like and what is their stated 'purpose'? Some ENGOs seek donations with every email and do not seem as interested in contributing to knowledge in a larger sense; language seems to be alarmist in comparison to NGOs that seek to increase knowledge and educate. What are the rates of success in terms of fundraising and in succeeding a group's stated objectives? Does the organization only respond to media requests or will they respond to individuals who may not directly help the organization in an obvious way? What kinds of messages are most successful in raising funds?

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Appendix

Appendix A: Red Chris Timeline

Date	Action
1995	American Bullion Metals submit application to the BCEAO for Red Chris Mine
2000	Bill C-31 changes enacted, allowing off reserve members to vote in band elections
2002	Changes to Fisheries Act Schedule 2, reclassifying existing mine tailings ponds as Tailings Impoundment Areas
2002	Off-reserve Tahltan, Jerry Asp, elected Tahltan chief, 90% of the vote come from Tahltans living off reserve
2003	Changes to the Canadian Environmental Assessment Act enacted, including broad public participation mechanisms in Section 21 of the Act
2003	BCEAO determines Red Chris Mine requires provincial environmental assessment certificate
2004	Federal ministries are triggered by Red Chris, requiring a comprehensive study review, (CEAA), including mandatory broad public participation included in the 2003 CEAA
2004	Pinchi Lake dam failure, residents not notified by government or industry about spill
2004	Government of British Columbia gives TCC $250,000/year to smooth projects, many on-reserve band members are not aware of the deal
2004	Federal Court decision, TrueNorth 2004 FC 1265, allowing RA's to reduce scope of projects
2004	Department of Fisheries and Oceans narrows the scope of Red Chris Mine assessment
2004	BCEAO allows comments on Red Chris Mine for 30 days
2005	Nova Gold donate $100,000 to Tahltan Central Council to bring off-reserve Tahltans to public meetings
2005	Tahltan Elders attend public meetings about resource development, are told by industry that consultation and accommodation has already occurred with Tahltan Central Council
2005	Tahltan Elders, shocked and concerned about the number of projects simultaneously under way, are distressed about not having been allowed to participate in decisions affecting them. They suspect corruption and occupy Tahltan Central Council Offices, demanding the Indian Act Chief's resignation
2005	BCEAO assessment concludes Red Chris project is unlikely to cause adverse effects
2005	Tahltans blockade and set up camp on road to Mt. Klappan
2005	Tahltans exercise a work stoppage, demanding Chief Asp's resignation from TNDC as conflict of interest. Asp resigns.
2005	Tahltan Central Council cancels AGM, conducting it without notice in backyard barbeque
2005	Court Injunction granted to Fortune Metals as blockade enters second month
2005	RCMP arrest 15 Tahltan members, including 9 Elders, at the blockade
2005	Indian and Northern Affairs takes over Telegraph Creek band office, removing Asp
2006	Iskut resident Marie Quock elected Iskut chief, along with a slate of reform candidates
2006	Tahtan Elders incorporate 'The Klabona Keepers' as a society to protect their traditional territory
2006	MWC files application for Judicial Review at Federal Court over project scope change
2006	MWC files formal complaint with securities regulators regarding misrepresentation to investors by bcMetals
2007	Federal Court rules in favour of MWC, allows Judicial Review to go forward to Federal Court

Date	Action
2007	MWC petitions Auditor General regarding Fisheries Act Schedule 2
2008	Federal Court of Appeal overturns MWC's Federal Court ruling
2009	Private members Bill C-300, regulating Canadian based mining companies operating abroad, passes in the House
2009	The Government of Canada announces funding for the Northwest Transmission Line
2010	Supreme Court of Canada decision on Red Chris Mine upholds participatory rights
2010	Changes made to CEAA in budget bill, responsive to Supreme Court decision on Red Chris Mine
2010	Changes to National Instrument 43-101 Standards of Disclosure for Mineral Projects, with stricter guidelines for extraction industry reports
2012	The Canadian Environmental Assessment Act is entirely repealed, with a new Act introduced, removing Section 21
2012	The BC government issues a permit to Red Chris Mine a week after the introduction of CEAA 2012

Appendix B: Ethics Certificate

University of Victoria

Human Research Ethics Board
Office of Research Services
Administrative Services Building
PO Box 1700 STN CSC
Victoria British Columbia V8W 2Y2 Canada
Tel 250-472-4545, Fax 250-721-8960
Email ethics@uvic.ca Web www.research.uvic.ca

Certificate of Renewed Approval

PRINCIPAL INVESTIGATOR:	**Kirsty Sewell**	**ETHICS PROTOCOL NUMBER** Minimal Risk - Delegated	**12-188**
UVic STATUS:	**Master's Student**	ORIGINAL APPROVAL DATE:	24-May-12
UVic DEPARTMENT:	**MADR**	RENEWED ON:	01-May-14
SUPERVISOR:	**Dr. K. Speers; Dr. L. Davis; Dr. M. Prince**	APPROVAL EXPIRY DATE:	23-May-14

PROJECT TITLE: **The Role Non Governmental Organizations have had in enforcing the right of the community to participate in environmental decision-making, particularly in the Red Chris Mine case**

RESEARCH TEAM MEMBERS: None

DECLARED PROJECT FUNDING: **None**

CONDITIONS OF APPROVAL

This Certificate of Approval is valid for the above term provided there is no change in the protocol.

Modifications
To make any changes to the approved research procedures in your study, please submit a "Request for Modification" form. You must receive ethics approval before proceeding with your modified protocol.

Renewals
Your ethics approval must be current for the period during which you are recruiting participants or collecting data. To renew your protocol, please submit a "Request for Renewal" form before the expiry date on your certificate. You will be sent an emailed reminder prompting you to renew your protocol about six weeks before your expiry date.

Project Closures
When you have completed all data collection activities and will have no further contact with participants, please notify the Human Research Ethics Board by submitting a "Notice of Project Completion" form.

Certification

This certifies that the UVic Human Research Ethics Board has examined this research protocol and concluded that, in all respects, the proposed research meets the appropriate standards of ethics as outlined by the University of Victoria Research Regulations Involving Human Participants.

Associate Vice-President Research Operations

Certificate Issued On: 01-May-14

12-188 Sewell, Kirsty

Appendix C: Participant Consent Form

University of Victoria
Public Administration

Faculty of Human & Social Development
School of Public Administration

Participant Consent Form

The Role Non Governmental Organizations had in enforcing the right of the community to participate in environmental decision-making in the Red Chris Mine case

The Role of Non Governmental Organizations in Enforcing the Right of the Community to be Involved in the Environmental Decision-Making Process, Specifically in the Red Chris Mine Case

You are invited to participate in a study entitled 'The Role of Non Governmental Organizations in Enforcing the Right of the Community to be Involved in the Environmental Decision-Making Process, Specifically that of the Red Chris Mine Case. The research is that is being conducted by Kirsty Sewell.

Kirsty Sewell is a graduate student in the department of Dispute Resolution at the University of Victoria and you may contact her if you have further questions by email: kirstye99@gmail.com phone 778-433-9364 address 1783 Adanac Street, Victoria, B.C. V8R 2C4.

As a graduate student, I am required to conduct research as part of the requirements for a degree in Dispute Resolution. It is being conducted under the supervision of Dr. Lyn Davis. You may contact my supervisor at 250-472-5431.

Purpose and Objectives

The purpose of this research project is the impact Non Governmental Organizations have had in enforcing the 'right 'to participate in environmental decision-making, in a Supreme Court of Canada Decision; that of MiningWatch Canada and Red Chris Development Ltd. There is a lack of relevant literature describing not only the strategies and tactics utilized by NGOs involved in the case, but also how effectively they affect enforcement of rights and the part they have in changes to law and policy.

Importance of this Research

This research is significant as the underlying issue is ongoing and pervasive: regardless of law and policy, citizens continue to have difficulty gaining access to information and being involved in decisions about the environment which directly affect them. In light of current research in the area, recent revisions to the Canadian Environmental Assessment Act, and the sociopolitical climate of the time in which we live, it is my position that effective enforcement of human participatory rights in environmental decision-making is likely to be an increasingly significant ongoing issue.

Participants Selection
You are being asked to participate in this study due to your knowledge or involvement in the case.

What is involved

If you agree to voluntarily participate in this research, your participation will include an interview, at your convenience, either in person or on the telephone. The interview is likely to take around 30 minutes to an hour, will be recorded in order to ensure I get details correct and may require follow up interviews as my research continues. Should you desire, you will have an opportunity to review the data I gather and provide feedback once my research is complete.

Inconvenience
Participation in this study may cause some inconvenience to you, including time spent during the interview and a possible follow up to ensure the data I have collected is correct. You will have the opportunity to look over the material I have collected during our interview and my analysis, and provide feedback.

Risks
There are no known or anticipated risks to you by participating in this research.

Benefits
The potential benefits of your participation in this research include contributing to the state of knowledge, bringing increased attention to the issue of environmental participatory rights and providing insight into how these rights could be extended and enforced in the future.

Voluntary Participation
Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your data will only be used with your permission.

Anonymity
In terms of protecting your anonymity, I will use pseudonyms, however this may prove challenging in some cases. There are a limited number of people involved in this particular case and those whose names are well known for being a part of the Supreme Court Decision may be difficult to keep completely anonymous.

Confidentiality
Your confidentiality and the confidentiality of the data will be protected by a password protected computer and any audio files will be kept in a locked filing cabinet, to be destroyed after the study is over.

Dissemination of Results
It is anticipated that the results of this study may be shared with others in the following ways: directly to participants; published article; thesis/class presentation, presentations at scholarly meetings, and on D-space once the thesis is complete.

Disposal of Data
Data from this study will be disposed of; electronic data will be erased; audio files destroyed, paper copies will be shredded as per participant preference.

Contacts
Individuals that may be contacted regarding this study include: researcher or supervisor; Lyn Davis, contact information at the beginning of this consent form.

In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

A copy of this consent will be left with you, and a copy will be taken by the researcher.

_____	_____	_____
*Name of Participant	Signature	Date

Appendix D: Questions for Lawyers Directly Involved in Case

Appendix 5 – Questions for lawyers directly involved in the Red Chris Mine case

REVISED
MAY 2 2 2012

The Role Non Governmental Organizations had in enforcing the right of the community to participate in environmental decision-making in the Red Chris Mine case.

Questions:

How did you become aware of the case?

When did you become aware of the case?

What did you do after being made aware?

What, if anything, might have avoided or prevented this case from being caught up in litigation and a prolonged dispute?

What kinds of strategies were employed to ensure a satisfactory outcome in the dispute?

Do you think the strategies were effective?

Did the media play a part in the events as they unfolded?

Was it felt that the media coverage was fair and unbiased?

Did the media coverage have an impact on the case result?

What do you think might have made the outcome of the case more pleasing to those in favour of participatory rights?

How satisfied were you with the result of the case?

How was success in this case measured?

What do you think the future holds regarding the evolution of environmental social movements and ensuring the public has a right to be involved in environmental decision-making?

What impact do you think the new federal Government's 'streamlining' of environmental assessments having on resource development and civic participation in environmental decision-making?

How do you feel the federal Government's stance on NGO international funding will have on the ability of NGOs to continue to operate?

What impact do you feel the federal Government labeling environmental groups as 'terrorists' and new terrorism legislation will have on the way environmental NGOs operate?

Appendix E: Questions for NGO Activists

REVISED
MAY 2 2 2012

Appendix 6 – Questions for NGO activists
Kirsty Sewell

The Role Non Governmental Organizations had in enforcing the right of the community to participate in environmental decision-making in the Red Chris Mine case.

Questions:

At what point did the NGO in question become involved in the case?

How did the NGO come to be involved in the case?

How did the case evolve? A chronology of key events.

Were there attempts at dispute resolution prior to litigation?

What strategies were used in achieving the NGO's goals?

How effective were the strategies?

What was the level of satisfaction with the result of the case?

How is effectiveness measured by the NGO?

Did the media play a part in the events as they unfolded?

Was it felt that the media coverage was fair and unbiased?

Did the media coverage have an impact on the case result?

What impact do you think the new federal Government's 'streamlining' of environmental assessments having on resource development and civic participation in environmental decision-making?

How do you feel the federal Government's stance on NGO international funding will have on the ability of NGOs to continue to operate?

How do you think the federal Government's desire to take away charitable status for environmental NGO's will impact the way NGO's operate?

What impact do you feel the federal Government labeling environmental groups 'terrorists' will have on the way environmental NGOs operate?

Appendix F: Questions for Legal Experts

Appendix 5 – Questions for legal experts on Red Chris Mine case
Kirsty Sewell

REVISED
MAY 2 2 2012

The Role Non Governmental Organizations had in enforcing the right of the community to participate in environmental decision-making in the Red Chris Mine case.

Questions:

How did you become aware of the case?

When did you become aware of the case?

What did you do after being made aware?

Were you involved with any of the NGOs as the dispute unfolded?

What, if anything, do you think might have avoided or prevented this case from being caught up in litigation and a prolonged dispute?

How effective do you think the strategies of the NGO's were?

How satisfied were you with the result of the case?

Did the media play a part in the events as they unfolded?

Was it felt that the media coverage was fair and unbiased?

Did the media coverage have an impact on the case result?

What do you think the future holds regarding the evolution of environmental social movements and ensuring the public has a right to be involved in environmental decision-making?

What impact do you think the new federal Government's 'streamlining' of environmental assessments having on resource development and civic participation in environmental decision-making?

How do you feel the federal Government's stance on NGO international funding will have on the ability of NGOs to continue to operate?

What impact do you feel the federal Government labeling environmental groups as 'terrorists' and new terrorism legislation will have on the way environmental NGOs operate?

Appendix G: Strategy Table

STRATEGY	NGOS	ACTIVITIES ILLUSTRATING STRATEGY
LEGAL	Ecojustice MWC	Looking through the CEAA registry for test cases to take to court to influence environmental law and policy, such as True North, Red Chris Mine (ENGOs) Bring test cases to Federal Court Seek leave to intervene in test cases Submit petitions (such as to BC and Canada securities commission and about MMER) Initiate legal proceedings Apply to Supreme Court for leave to appeal Federal Court decisions Submit comments on areas of concern, such as to the Mining and Processing Division of Environment Canada on the Proposed Amendment to the Metal Mining Effluent Regulations, also providing brief comments on Aboriginal Consultation and the Schedule 2 amendment process consultations Take government to court Seek court injunctions Advocate for law reform Represent or advise individuals/groups on project specific processes Apply for 'Interested Party Status' in hearings Conduct legal analysis File appeals about Freedom of Information

PRESS RELEASES	All NGOs in study	'http://www.mining.bc.ca/our-focus/aboriginal-community-relations MWC 'Background Information on Proposed Metal Mining Effluent Regulations' http://www.ecojustice.ca/press-releases/ Ecojustice 'Environmental groups take Feds to the Supreme Court' CELA 'Canadian Environmental Assessment Act:
PARTICIPATE IN PARLIAMENTARY HEARINGS/REVIEWS	Ecojustice MWC	http://www.miningwatch.ca/article/whose-development-mining-local-resistance-and-development-agendas
NETWORK	All NGO's in study	ENGOs – Canadian Environmental Network http://rcen.ca/home
WORK WITH BUREAUCRATS	MWC Ecojustice SWCC	MWC during environmental assessment of RCM, tried to engage president of CEAA as well as director of DFO was unsuccessful
LOBBY	MWC Ecojustice Mining Association of BC Association of Mineral Exploration of BC Mining Association of Canada	MABC – lobby government for changes to law, policy, regulations – largely very successful
PUBLICATIONS	All NGOs in this study	http://www.ecojustice.ca/case/ensuring-effective-oversight-of-aquaculture-vets/
EDUCATION	All NGOs in this study	http://skeenawatershed.com/projects/public_education

GRASSROOTS	All NGOs in study	http://www.fairmining.ca/services/
ACCESS TO INFORMATION	All NGOs in study	All NGO websites
COLLABORATION	All NGOs in study	Work together
AWARDS	SWCC	Tides Canada Award
SOCIAL MEDIA	All NGOs in study	https://www.facebook.com/ecojustice https://www.youtube.com/channel/UCCbLUPytDmdkJkc0dBKsR-w https://twitter.com/MiningWatch https://www.youtube.com/channel/UCZW99kC-iYLU0D_bdJa5p8w
ARTISTIC MEANS	Ecojustice MWC SWCC	http://skeenawatershed.com/projects/up_your_watershed_tour_-_may_2011

Appendix H: Demonstration of Links Between Media and Industry

Industry Links

Oil sands of benefit to Eastern, Central Canada

"We hear about the need to look to emerging markets for growth opportunities but often forget that the oil sands is one of the biggest emerging markets for manufacturers in terms of value – more so even than China."

www.financialpost.com

Building Trades Union Leader Extols Environmental Stewardship of Canadian Oil Sands Development

Upon returning from a tour of the Canadian oil sands region, Sean McGarvey, president of North America's Building Trades Unions, today chastised the radical environmental movement for perpetrating a deliberate misinformation campaign upon the American public with regard to oil sands development and the Keystone pipeline.

www.capp.ca

Safe Marine Operations

Trans Mountain has loaded marine vessels with petroleum since 1956 without a single spill from vessel operations.

www.capp.ca

Industry working to establish mutually respectful relationships

Follow up interview to Alberta Oil's April 2014 interview with Chief Allan Adam on the impacts of oil sands development on the Athabasca Chipewyan First Nation.

www.capp.ca

2013 Atlantic Canada Responsible Canadian Energy Report

This report highlights the oil and gas industry's activities in the Atlantic

www.capp.ca

Provided by

@OilGasCanada on Twitter

(http://business.financialpost.com/2014/03/07/a-joint-venture-with-capp-canadas-oil-sands-innovation-alliance-collaboration-for-the-environment/?__lsa=70fe-88af)