

Primer

for the **Spirit of the Land** Indigenous
Cultural Rights and Interests Toolkit



Acknowledgement

The Indigenous Cultural Rights and Interests Toolkit has been developed by the First Nations Major Projects Coalition (FNMPC) with support from Firelight and its First Nation partners, the Anishinabek Nation, Stellat'en First Nation, Nadleh Whut'en First Nation, Saik'uz First Nation, and Cheslatta Carrier Nation ("Carrier First Nations").

Thanks, and acknowledgements go to the Anishinabek and Carrier First Nations elders, knowledge holders, staff, and leadership who contributed to this project. We also extend our appreciation to Lheidli T'enneh First Nation for their participation in the workshops and for sharing perspectives that informed the development of this work. This project could not have been completed without the support and expert knowledge of all who contributed.



Prepared by:

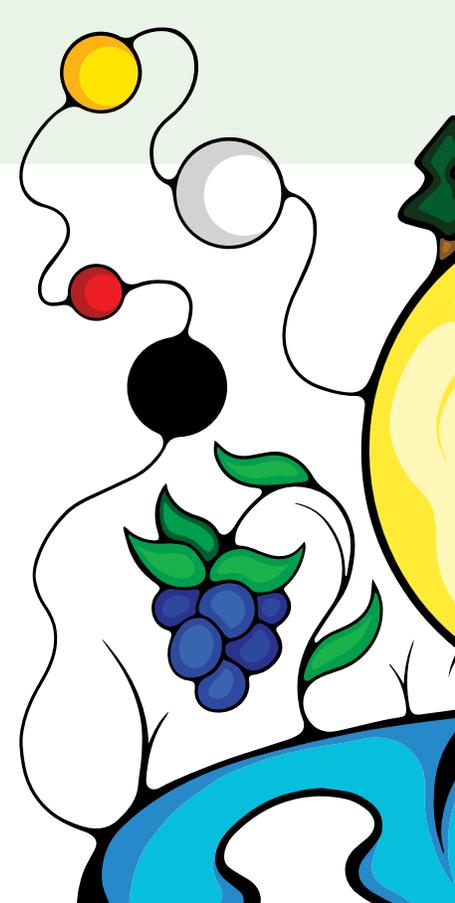


With support from:



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First Nations Major Project Coalition





Artist Statement

Johnny Ketlo, *Nadleh Whut'en First Nation*

"The Owl Guardian piece was created with deep intention and carries teachings from my own family lines. The owl stands as the main guardian, watching over the Keyoh (our ancestral territory) with clarity and protection. Within the piece, I included both the frog and the salmon. My father is of the Owl clan and my mother is Frog clan, so their presence symbolizes lineage, balance, and the joining of two worlds. The salmon represents Nadleh itself "where the salmon return" and speaks to renewal, strength, and the spirit of coming home. Together, these elements watch over the land in a way that honours our Dakelh teachings and the responsibilities we carry to our territory and our people."



Title of work: **Turtle Island**

Artist Statement

Michael Cywink, *Whitefish River First Nation*

"For this piece I thought about our connection to land, water, original teachings and our responsibilities to Turtle Island. The middle section is Turtle Island; this beautiful land we call home. Our creation stories tell us that this land rests on the back of a giant turtle. This land provides everything we could ever ask for, so we have a responsibility to take care of her. The orbs around the turtle represent the spirits. The spiritual connection between the physical world we live in and everything within it. They are always there and we are always connected. And the flowers represent the beauty this world has to offer and a reminder of how we need to protect that beauty. This land, this water, the plants and spirit are always connected. They always have been and always will be."

Editor's Note

Dated: September 5, 2025

We are honored to present the First Nations Major Projects Coalition's (FNMPC) Primer for the Spirit of the Land Indigenous Cultural Rights and Interests Toolkit with deep gratitude to the communities, organizations, and individuals who helped bring this important resource to life.

This toolkit was developed through workshops convened by FNMPC in partnership with the Anishinabek Nation (Ontario) and the Carrier Nations—Nadleh Whut'en First Nation, Saik'uz First Nation, and Stelat'en First Nation (Northern British Columbia)—with support from The Firelight Group and Lheidli T'enneh First Nation. These sessions were a vital step in strengthening a community-driven approach to cultural assessment in the context of major project development.

Each gathering began with a reflection on the enduring relationship between First Nations—both treaty and non-treaty—and their lands, cultures, and Aboriginal rights. A presentation of the Toolkit set the stage for world café-style breakout discussions, where participants explored foundational elements of cultural assessments: cultural inventories, baseline and current conditions, and cumulative effects. These dialogues generated valuable, community-aligned insights and practical next steps, affirming the significance of culturally grounded, community-led approaches.

We are deeply thankful to all workshop participants for sharing their time, knowledge, and experience. Special thanks to our guest speakers for their generous contributions.

The original vision for this initiative was shaped by key thought leaders, including:

- » The late Niilo Edwards (Former CEO, FNMPC)
- » Regional Chief Joe Miskokomon (Anishinabek Nation, Southwest Regional Chief (Chippewas of the Thames First Nation))
- » David Luggi (Advisor, Stelat'en First Nation Member)
- » Angel Ransom (FNMPC, Nak'azdli Whut'en First Nation Member)
- » Trefor Smith and Kimberley Keller (Formerly at Firelight)

Their early leadership and insight provided the foundation on which this toolkit was built.

We extend a heartfelt thank you to the FNMPC Environmental Stewardship Technical Team (ESTT)—then comprised of Jasmine Thomas, Jesse McCormick; and Indigenous Technical Advisors—Albertina Erickson and Betty Patrick; Firelight; and Aaron Bruce Law—for their dedication throughout the planning, development and review phases.

Valuable support and guidance were provided by Carrier First Nations Leadership, including:

Retired Chief Leween (Cheslatta), Chief Michelle (Stella), Chief Mueller (Saik'uz), Chief Ketlo, Former Chief Louie and Councillor Eleanor Nooski (Nadleh), and the committed community technicians: Douglas Casimel, Isaiah Reynolds, Nicole Wheel, James Rakochey, Cora McIntosh, Kasandra Turbide, and many others.

We acknowledge that the term “Carrier Nations” in this context refers solely to the four First Nations involved in the project and does not imply representation of all Carrier communities.

We also wish to acknowledge the Anishinabek Nation Leadership, including Regional Chief Melvin Hardy (Biinjitiwaabik Zaaging Anishinaabek) and team members: Jason Laronde, Rhonda Gagnon, Alyssa Ray, Brandon Manuel, Darlene Solomon, and Dawn Lambe, for their key support and leadership throughout the process.

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The technical and facilitation support from Firelight and Four Directions Management Services was instrumental in the success of the workshops and resource development.

Finally, our deepest thanks go to all community members who participated. Your voices ensured that this Toolkit reflects authentic perspectives, community values, and cultural integrity.

In unity and collaboration, we are reminded that meaningful progress is achieved not through perfection, but through shared purpose and partnership.

Musi Cho, Angel Ransom, Spirit of the Land Project Lead

Spirit of the Land

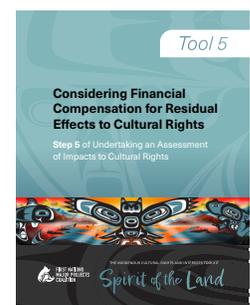
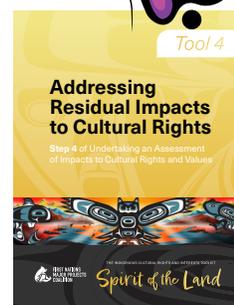
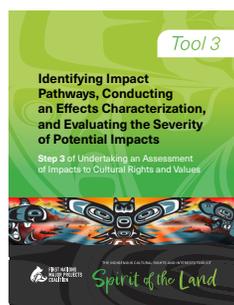
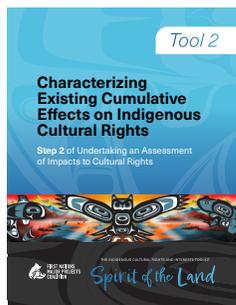
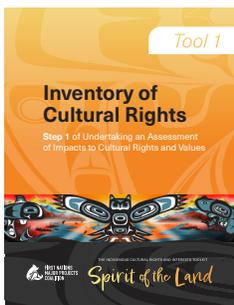


Table of Contents

Introduction	8
Primer and Implementation Guide.....	10
Understanding Indigenous Cultural Rights.....	10
Understanding Indigenous Cultural Rights.....	14
Toolkit Methodology.....	15
Etuaptmumk (Two-Eyed Seeing).....	15
Walking on Two Legs.....	16
Confidentiality and OCAP®.....	17
Tool #1: Inventory of Cultural Rights	18
Introduction and Purpose.....	18
Terminology.....	18
Principles.....	19
Summary.....	19
Tool #2: Characterizing Existing Cumulative Effects on Indigenous Cultural Rights	20
Introduction and Purpose.....	20
Terminology.....	20
Principles.....	21
Summary.....	23
Tool #3: Identifying Impact Pathways, Conducting an Effects Characterization, and Evaluating the Severity of Potential Impacts	24
Introduction and Purpose.....	24
Terminology.....	25
Principles.....	26
Summary.....	28
Tool #4: Addressing Residual Impacts to Cultural Rights	29
Introduction and Purpose.....	29
Terminology.....	30
Principles.....	30
Summary.....	33
Tool #5: Considering Financial Compensation for Residual Effects to Cultural Rights	34
Introduction and Purpose.....	34
Terminology.....	35
Principles.....	36
Summary.....	37
Conclusion	38

SOTL Methodology Workshop

February 13 & 14, 2025, Prince George, BC





Introduction

The Spirit of the Land Indigenous Cultural Rights and Interests Toolkit (the “Toolkit”) is a series of integrated policy and technical guidance (“Tools”) for assessing potential impacts to Indigenous Cultural Rights. The Toolkit is intended to support Indigenous Nations in their consent-based decision making on major projects and the protection and promotion of Indigenous Cultural Rights. The Toolkit also explores the potential for accommodation and compensation for project-specific and cumulative effects on Indigenous Cultural Rights. The Toolkit is made up of this Primer and the Spirit of the Land Implementation Guide (referred to as “the Guide”).

Recognizing the existing gap surrounding Cultural Rights assessment in Impact Assessment (IA)¹ policy and law, the Toolkit is designed to support Indigenous Nations that are engaging with project proponents and the Crown in discussions about offsetting residual project-specific and cumulative effects on Cultural Rights. As a technical support, the Toolkit will be particularly useful in situations where a proposed project poses serious, long-term, or irreversible impacts to an Indigenous Nation’s Cultural Rights. By providing a framework for evaluating and responding to adverse effects, this Toolkit seeks to empower Indigenous Nations in the assessment of potential impacts and the identification of accommodation measures to avoid or minimize those impacts. The Toolkit may also benefit proponents seeking greater clarity and certainty around what Indigenous Cultural Rights are and how they can be assessed and mitigated in collaboration with impacted Indigenous Nations and may also benefit governments that are charged with the task of appropriately assessing the risks and impacts of major projects on Indigenous Nations.

This Toolkit is an Indigenous-led process, rooted in community principles and leadership, where the knowledge of culture holders must play a central role in any meaningful cultural impact assessment. It is designed to be collaborative and adaptable across diverse contexts, but it cannot be unilaterally applied by industry or government without the agreement of the affected Indigenous Nation. As emphasized by Chief Joe Miskokomon during the development of the SOTL Toolkit, it is critical to consider how implementation looks for First Nations in densely populated or heavily developed regions, such as the Chippewas of the Thames, Muncey-Delaware, or Fort McKay. By recognizing these varied realities, the Toolkit affirms that Indigenous Knowledge is best protected—and cultural assessments most effective—when led by the Indigenous Nations themselves.

¹ For the sake of this Toolkit, the term Impact Assessment should be understood as being inclusive of Canadian Environmental Assessment (EA).

The Toolkit is comprised of five distinct tools:

Tool 1

How to undertake an inventory of Cultural Rights (including areas, important cultural landscapes, areas of preferred use, etc.) within an Indigenous Nation's territory deemed to be at risk in relation to a proposed major project.

Tool 2

How to characterize the cumulative effects, or historical context, related to Cultural Rights within which the potential impacts of new proposed projects may occur.

Tool 3

How to identify impact pathways, conduct effects characterization, and evaluate the severity of potential impacts. This includes weighing historical context, considering potential future impacts, implementing community-focused criteria, and drawing on community-focused thresholds in such determinations.

Tool 4

How to analyze and determine the extent to which impacts can be accommodated (i.e., restoration and offsetting), as well as for addressing "non-compensable impacts" to Cultural Rights and values.

Tool 5

Considerations for when financial compensation is desired for impacts to Cultural Rights and values that may be adversely impacted by likely effects associated with proposed major projects.



Primer and Implementation Guide

The Spirit of the Land Toolkit consists of this Primer and the Spirit of the Land Implementation Guide (the “Guide”). This Primer outlines the foundational principles and definitions related to Indigenous Cultural Rights, touching on both the tangible and intangible aspects of culture. The Guide is the Toolkit’s resource, designed to provide Indigenous Nations with information and guidance for applying the identified approaches and frameworks within their own community contexts.

The Guide offers a range of options and methods that Indigenous Nations can use to identify, assess, and respond to potential impacts from major natural resource or infrastructure projects on Cultural Rights. It is not prescriptive; rather, it is intended to help Indigenous Nations decide how best to assess impacts to their Cultural Rights

Understanding Indigenous Cultural Rights

In 2021, the Canadian federal government enacted the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIPA). UNDRIPA provides a framework for implementing the United Nations Declaration on Indigenous Peoples (UNDRIP), which contains provisions for the protection of Indigenous culture. However, UNDRIPA has not provided a clear understanding of Cultural Rights grounded in Indigenous Nations’ perspectives. As a result, this Toolkit looks to each individual Indigenous Nation to articulate their own understanding of their Cultural Rights, rather than attempting to characterize the legal dimensions of Cultural Rights overall. There are as many possible definitions for culture as there are distinctive cultures themselves. Rather than implementing a reductionist approach, it is our intention to develop a framework that relies on an overarching and flexible definition of Cultural Rights that is not restrictive to individual Indigenous Nations definitions. This general understanding of Cultural Rights has been derived from common attributes of Cultural Rights defined by Indigenous peoples and includes consideration of definitions put forward by governing and legislative bodies:

“ [Culture] includes the way of life, the system of knowledge, values, beliefs, and behavior, all of which is passed down between generations. Culture is reflected and embedded in practice, the built and natural environment, and the relationships between people and their natural environment”²

² Gibson, “Survey of the Field,” 8, *emphasis added*. This definition also draws on conceptualizations such as those put forth by the UNESCO Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage on its activities (2001) and the UN’s independent expert in the field of Cultural Rights, Shaheed, “Cultural Rights: What Are These and Why Are They Important for Women’s Right to Development?,” Conference Proceedings (Asia Pacific Regional Consultation with UN Special Procedures: Women’s Right to Development, Phnom Penh: 2011).

This definition includes both the tangible and intangible facets of culture. Culture is more than *physical*, or *tangible*,³ manifestations such as art, buildings, heritage sites, and documents. The concept must be understood as including elements such as *non-physical*, or *intangible*, manifestations such as relationships, stories, knowledge, and ways of life. Furthermore, Indigenous culture is not static, but temporally fluid – evolving, passed down, and adapting over time.

This Toolkit therefore defines the *right to culture*:⁴ as **the right to protect, practice, transmit, revitalize, and access, in any preferred means, both the tangible and intangible elements of culture**. The right to protect, teach, learn, and speak one's own language is an example of a Cultural Right. Other Cultural Rights include the right to protect and transmit knowledge, sense of identity and place, a worldview, and a way of life. In the context of a major project, this may include, but would not be limited to, the right to protect certain places or landscapes that hold special cultural significance and are integral to practicing a Cultural Right. Cultural Rights are rooted in cultural values, and they may often involve practices, stories, and beliefs that are attached to specific geographic locations. Some further examples of Indigenous Cultural Rights are provided in Figure 1.

A key element of Cultural Rights is the ability to access all the spaces, places, activities, and resources necessary to engage in, transmit, and perpetuate cultural practices. This includes cultural activities that are currently practiced, as well as those that will be practiced in the future. Cultural Rights also encompass the ability of Indigenous Nations to transmit and teach cultural knowledge, values, and practices to current and future generations, including providing the opportunity for Indigenous Nations to be out on the land and tell stories and share knowledge about specific areas of cultural importance. The right to cultural continuity emphasizes factors such as kinship and practices integral to a certain way of life. A central tenet of the right to cultural continuity is the ability and assurance that culture will live on and be meaningfully practicable for subsequent generations. As such, Cultural Rights also include the ability of Indigenous Nations to be able to undertake activities and practices to actively reclaim and rebuild their cultural and legal traditions within their territory.

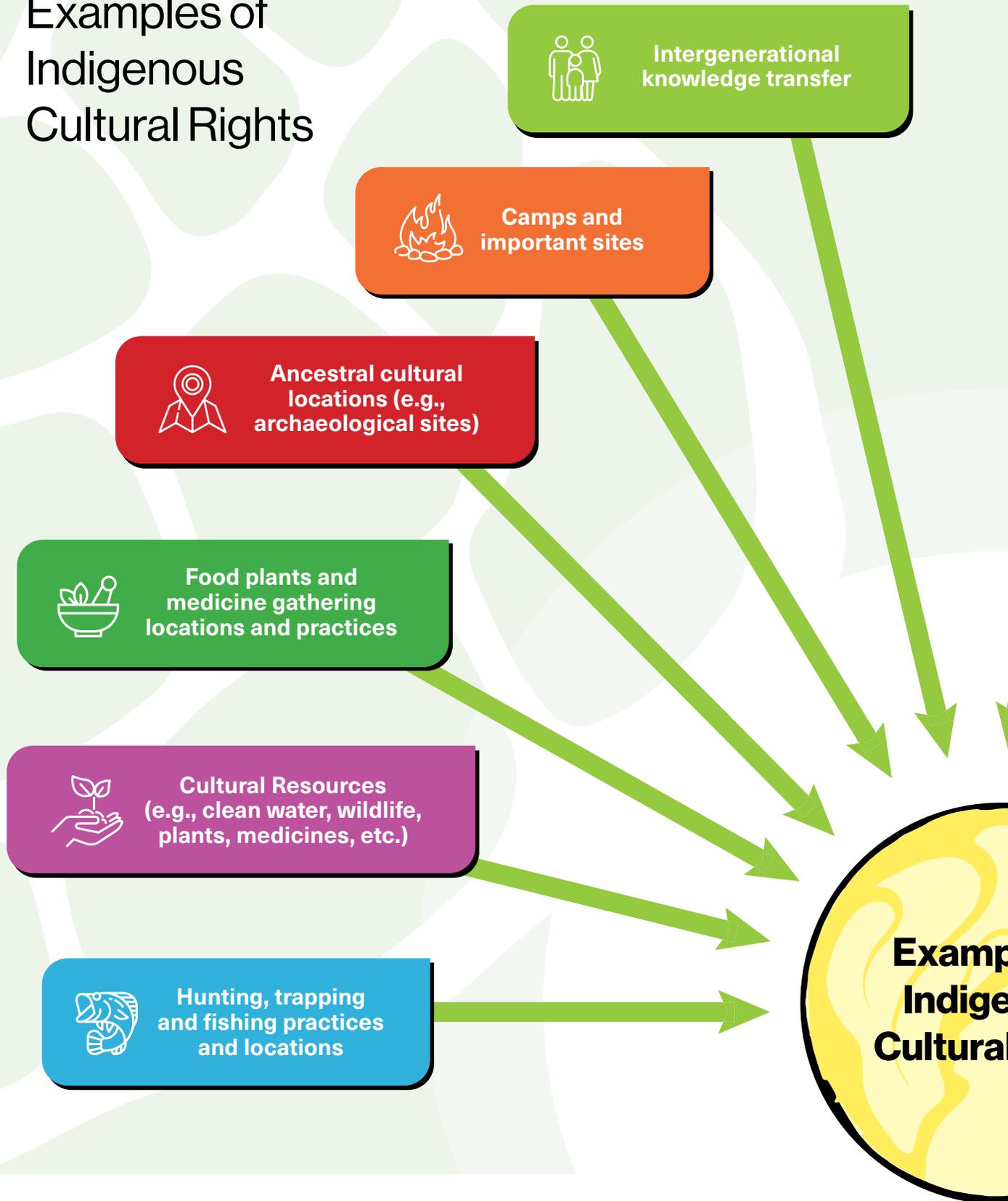
A second foundational element of Cultural Rights relates to locations of cultural importance. Cultural Rights include the right to protect and enjoy these sites of importance, and these rights cannot be extinguished even if the locations are not currently accessible due to various developments, relocations, or additional factors. Often, these sites will have great importance culturally, spiritually, or traditionally. For example, cultural sites of importance may be locations tied to creation stories of a Nation's history. While continued access to these sites may no longer be available, they still retain their value and importance.

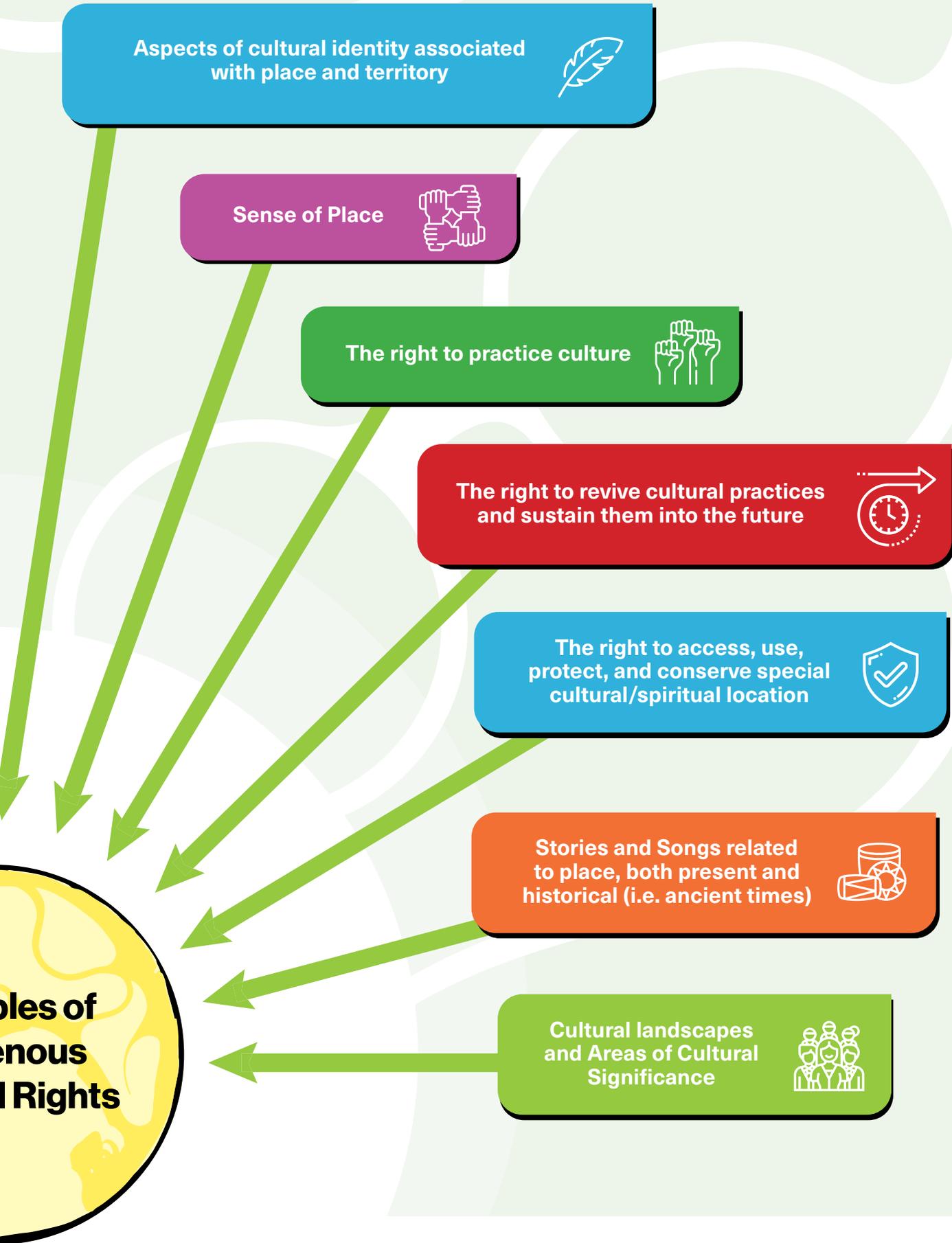
Figure 1 on the next page shows some examples of Indigenous Cultural Rights. The Cultural Rights discussed in this Toolkit are not an exhaustive or definitive list, they are merely examples to aid in facilitating discussion and to help ensure a robust approach to understanding and protecting Cultural Rights. In reality, culture holders may not distinguish between such categories, and it is their right to insist that impacts on culture be assessed in a holistic way through their Nation's particular lens.

³ The terms "physical" culture and "tangible" culture are used interchangeably to refer to cultural structures, items, and locations that can be touched, visited, and/or mapped (e.g., physical structures, settlements, encampments, burial sites, etc.). Similarly, the terms "non-physical" and "intangible" culture are used to refer to the elements of culture which are more difficult to define and quantify and cannot necessarily be touched or situated on a map (e.g., beliefs, spiritual significance, traditions, identity, sense of place, etc.).

⁴ The Toolkit's definition of a right to culture is further grounded in the principles articulated in the *United Nation's Declaration on the Rights of Indigenous Peoples* (2007), which sets out a series of principles designed to protect the distinct identity and cultural integrity of Indigenous peoples. For further information on how the concept of Cultural Rights was defined, please see the Toolkit *Background* (pages 2-5).

Figure 1
Examples of
Indigenous
Cultural Rights





Understanding Indigenous Cultural Rights

This Toolkit is proposed as a means of driving community conversation about what elements of Indigenous culture are most important to protect and promote, the current state of Cultural Rights, the desired state of Cultural Rights, and how to get there. As such, this Toolkit is designed to present the concepts and practical options to Indigenous Nations to understand, assess, and respond to project impacts on Cultural Rights and interests. **This Toolkit is not designed to define the individual or collective rights of Indigenous Nations.**

This Toolkit provides a series of Tools useful for both preparation beforehand and during the assessment of project effects on Indigenous Cultural Rights. It can be directly applied to either a proposed or ongoing major project within a Nation's territory. Through this application, the Toolkit is designed to help an Indigenous Nation advocate for, and ensure the protection of, Cultural Rights, and where necessary, secure restitution for residual impacts to Cultural Rights. It will help an Indigenous Nation identify and characterize Cultural Rights within their territory, as well as flag which Cultural Rights are more sensitive to change and/or are already impacted as a result of past and present cumulative effects. The Toolkit can also assist an Indigenous Nation in pre-determining what Cultural Rights and values are "non-compensable" (i.e., cannot be impacted under any circumstances, and cannot be substituted) as well as desired programs or initiatives that may be prioritized in discussions around compensation. In doing so, this Toolkit can help contribute to a Nation's internal capacity and help prepare Indigenous Nations for Impact Assessment processes before they begin.

The Toolkit is designed to create meaningful space for Indigenous ways of knowing and ensures that Indigenous Knowledge is central to its application.

The Toolkit is also meant to be flexible to allow the general concepts it presents to be integrated into the existing governance systems, policies, and laws of the relevant Nation. For example, a Nation may have existing policies or laws pertaining to:

- » Indigenous-defined impact pathways between the biophysical environment and culture (i.e., connections between the health of the environment and Indigenous cultural vitality).
- » Indigenous-defined benchmarks or thresholds for the health/abundance of the biophysical environment that are directly or indirectly related to the ability to practice Cultural Rights (i.e., standards of territorial and ecological "intactness" and "sufficiency" to support the practice of Cultural Rights).
- » Indigenous-defined protection measures directly or indirectly related to Cultural Rights.

These existing procedural tools can, and should, be used to supplement and refine the tools contained within this Toolkit to best meet the Indigenous Nation's needs.

Furthermore, this Toolkit has been designed with the intent to support collaboration by providing a foundation for problem-solving discussions. While this Toolkit is designed for implementation by Indigenous Nations, it can provide value to Proponents and Governments seeking to support Indigenous Nations in understanding, assessing, and responding to expected project impacts. The goal is to support informed decision making and free, prior and informed consent.

Toolkit Methodology

The Toolkit and Tools have been collaboratively developed by the FNMPC using an Indigenous perspective based on feedback and practices gathered through our engagement with our partner Indigenous Nations. Referred to as the *Spirit of the Land Project* by the Anishinabek Nation, this Toolkit was developed through extensive back and forth communications, research, and literary review. This process has helped ensure that the Toolkit provides applicable policy and technical guidance options for characterizing, evaluating, and where desired, determining restitution for project-specific and cumulative effects on Indigenous Cultural Rights.

Impact Assessments to date have been predominantly informed by Western scientific processes and uphold colonial systems of decision-making and evaluation. These processes have historically failed to meaningfully include Indigenous Nations. We recognize that Indigenous Nations have a wealth of knowledge and ways of knowing that are critical for adequately assessing project impacts, and that Nations often prefer to use their Indigenous systems of law and governance to decide how to address those impacts. To address this disconnect, we have sought to ground the Toolkit in the concepts of Two-Eyed Seeing and Walking on Two Legs.

Etuaptmumk (Two-Eyed Seeing)

Mi'kmaq Elder Albert Marshall introduced *Etuaptmumk*, or Two-Eyed Seeing,⁵ as a means of utilizing both Indigenous Knowledges and Western knowledges, without either dominating or overpowering the other.⁶ Two-Eyed Seeing refers to the power of looking at the world from two world views: Indigenous and Western. The goal of Two-Eyed Seeing is “learning to see from one eye with the strengths of Indigenous Knowledges and ways of knowing, and from the other eye with the strengths of Western knowledges and ways of knowing and to using both of these eyes together.”⁷ By bringing together different ways of knowing, Two-Eyed Seeing allows for a greater understanding of the world, where Indigenous Knowledge is respected as a distinct and whole knowledge system alongside, and equal to, Western science.⁸

⁵ Albert Marshall, “Learning to See with Both Eyes (The Green Interview)” (Canada, 2018), <https://www-mcintyre-ca.proxy.library.carleton.ca/carletonu3/code/PT0105>.

⁶ Annamarie Hatcher et al., “Two-Eyed Seeing: A Cross-Cultural Science Journey,” *Green Teacher*, no. 86 (Fall 2009): 5.

⁷ Cheryl Bartlett, Murdena Marshall, and Albert Marshall, “Two-Eyed Seeing and Other Lessons Learned within a Co-Learning Journey of Bringing Together Indigenous and Mainstream Knowledges and Ways of Knowing,” *Journal of Environmental Studies and Sciences* 2, no. 4 (November 2012): 335, <https://doi.org/10.1007/s13412-012-0086-8>.

⁸ Bartlett, Marshall, and Marshall, “Two-Eyed Seeing,” 336

Walking on Two Legs

Spoken by Secwépemc Elder Ronald E. Ignace, *Walking on Two Legs* represents the balancing of western science with Indigenous Knowledge to uphold the principles of respect, reciprocity, and responsibility. Similar to *Two-Eyed Seeing*, *Walking on Two Legs* is “practice and action-oriented, with the joint walking – guided by an Indigenous mind – compelling movement forward”.⁹ In this way, *Walking on Two Legs* requires a shift away from the incorporation of Indigenous Knowledge into Western practices, but rather requires the revisioning of such practices as being inclusive of, and grounded in, Indigenous stewardship and governance systems.

To integrate these approaches into the development of the Toolkit, we have worked with our partner Indigenous Nations to ground the Tools in existing Indigenous-led practices, including stewardship and governance programs. The Tools then seek to illustrate how IA processes must consider these Indigenous initiatives, and how the information can and should be used to inform IA decisions. By this understanding, the Toolkit recognizes that Indigenous Nations have their own processes and seeks to illustrate ways in which those processes can be mobilized to protect Indigenous Cultural Rights. These Tools seek to meaningfully integrate Indigenous ways of conceptualizing Cultural Rights into Canadian IA systems while ensuring that Indigenous Knowledge is not taken out of context or misunderstood.

⁹ Sarah Dickson-Hoyle et al., “Walking on Two Legs: A Pathway of Indigenous Restoration and Reconciliation in Fire-adapted Landscapes,” *Restoration Ecology* 30, no. 4 (2022): 1, <https://doi.org/10.1111/rec.13566>.

Confidentiality and OCAP®

This Toolkit has been developed to reflect and implement the principles of confidentiality contained within *The First Nations Principles of OCAP®*. OCAP® ensures that “First Nations have control over data collection processes, and that they own and control how this information can be used”.¹⁰ This Toolkit recognizes the principles of OCAP® and calls for their application throughout all instances where a cultural impact assessment is being conducted. These principles are:

- » **Ownership:** An Indigenous Nation owns information collectively in the same way that an individual owns their own personal information.
- » **Control:** Indigenous Nations, their communities, and representative bodies are within their rights to seek control over all aspects of research and information management processes that impact them.
- » **Access:** Indigenous Nations must have access to information and data about themselves and their communities regardless of where it is held.
- » **Possession:** Indigenous Nations retain physical control of data to ensure that ownership can be asserted and protected.¹¹



¹⁰ First Nations Information Governance Centre, “The First Nations Principles of OCAP®,” The First Nations Information Governance Centre, accessed September 24, 2021, <https://fnigc.ca/ocap-training/>.

¹¹ First Nations Information Governance Centre, “The First Nations Principles of OCAP®”.

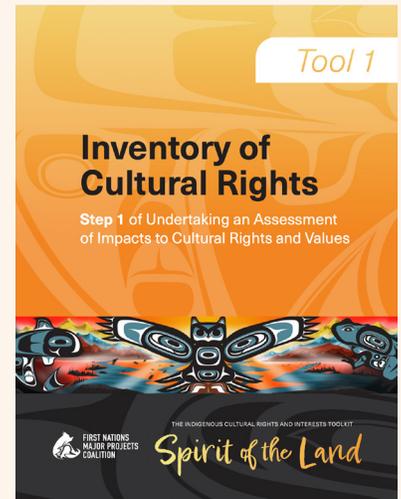
Tool 1

Inventory of Cultural Rights

Introduction and Purpose

The first step in assessing the potential cultural impacts of a proposed major project is to develop an inventory of Cultural Rights. This Tool supports Indigenous Nations in identifying and documenting Cultural Rights that matter most to the community, including Cultural Rights that are most at risk and priorities for revitalization. The process of determining at-risk rights and community priorities includes looking at potential impacts from the new project as well as combined effects of multiple developments that have occurred, are occurring, or are likely in the future to occur within the same culturally important areas. By developing an inventory of these rights, an Indigenous Nation can best allocate time and resources towards their protection and resurgence.

By bringing Indigenous voices, stories, knowledge, and experiences to the forefront, this Tool helps convey the value and use of the potentially impacted territory from the perspective of the Cultural Rights holders. This understanding can be used to inform the government and/or proponent about what is important and what is at stake from an Indigenous lens.



TERMINOLOGY

The following terminology is used throughout this Tool. Definitions for each term are provided below.

- » **Cultural Landscape:** large areas that are culturally known and connected to cultural use in ways passed down between generations; also known as the lived landscape.
- » **Cultural Keystone Places:** areas of exceptionally high cultural importance, often associated with areas of regional biodiversity.
- » **Cultural Keystone Species:** species that “shape in a major way the cultural identity of a people, as reflected in the fundamental roles these species have in diet, materials, medicine, and/or spiritual practices”¹³.

¹² These non-project specific effects are called “cumulative effects”.

¹³ Garibaldi and Turner, “Cultural Keystone Species,” 4.

Principles

In the development of its *Guidance Appendices to the Major Projects Assessment Standard (2020)*, the FNMPC identifies some key principles associated with the practice of cultural impact assessment in relation to Indigenous peoples during major project assessment. These principles include:

- 1** Recognition that Indigenous cultures have different ways of knowing and communicating that should be incorporated into the cultural impact assessment.
 - » Cultural knowledge and information is the property of culture holders and must be protected and respected. This will require data storage methodology that aligns with Indigenous principles of ownership, control, access, and possession (OCAP®) (<https://fnigc.ca/ocap-training/>)
- 2** Recognition that cultural impacts can only be understood in context – from the perspective of the culture holders themselves.
- 3** Recognition of culture as multi-dimensional, and that impacts can occur on a variety of cultural resources.
- 4** Recognition that undergoing these studies may be triggering or traumatic for community members, and that community healing should be centered in all methodology and goals.

Summary

Tool #1 is designed to help build an inventory of Cultural Rights and the related cultural resources necessary to uphold those rights within an Indigenous Nations' territory. The identification of these rights should be grounded in the voices, stories, knowledge, and experiences of community members. The Guide contains methods and information on how to conduct studies to inventory Cultural Rights. The information collected through this Tool may be used to inform the government and/or proponent about what is important to the Nation, and what is at stake. This identification and inventorying may also take into consideration past and present conditions (e.g., spaces and resources that are currently practiced as well as those that are no longer accessible), both tangible and intangible Cultural Rights, and the geographic extent of the right.

The Guide contains a variety of different ways to identify and inventory Cultural Rights, each with their own strengths and weaknesses. These methods expand on how to undertake direct community engagement, density of use and heat maps, traditional and current use studies, the identification of cultural landscapes, Indigenous Knowledge/Ecological studies and the identification of cultural keystone places/species, the codification of laws and norms, and the important role that “triangulation” of results from multiple sources and approaches to the inventorying of Cultural Rights can have in the confidence we have that Cultural Rights have been properly inventoried.

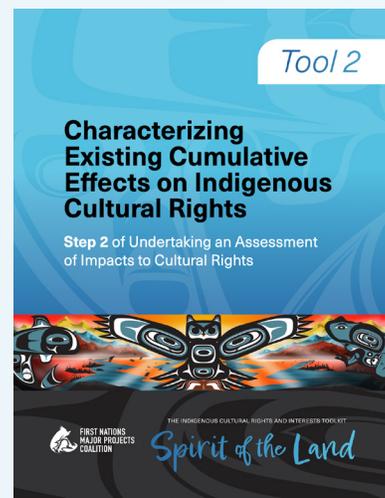
Tool 2

Characterizing Existing Cumulative Effects on Indigenous Cultural Rights

Introduction and Purpose

From the FNMPCC's perspective, cumulative effects assessment should be a core element of any major project assessment. Cumulative impacts arise from the combined total effects from past, present, and likely future human actions, and from the way in which potential project-specific effects may interact with these accumulated effects. This Tool supports Indigenous Nations in better understanding how past and ongoing changes have already affected Cultural Rights, so that a more detailed and accurate assessment of potential future project impacts on Cultural Rights can be made.

Characterizing cumulative effects helps illustrate the ways by which Cultural Rights have already been and are still being impacted by multiple cumulative stressors on the environment and people. This characterization is especially important when an Indigenous Nation has already faced significant cultural change through processes such as displacement and development within ancestral territories. In these cases, Cultural Rights may be more vulnerable to project impacts. Without a clear cumulative effects context, the extent of the vulnerability of Cultural Rights cannot be properly understood.



TERMINOLOGY

The following terminology is used throughout this Tool. Definitions for each term are provided below.

- » **Cumulative Effects:** Changes to environment, rights, culture, and/or society that are caused by the combined effects of past, present, and future actions.
- » **Cumulative Effects Assessment:** The examination of how all past, present and likely future activities combine to impact an area or specific values (such as moose or salmon).

- » **Induced Effects:** “Knock on” or “spin off” effects caused as a result of the direct and indirect effects of a major Project (i.e., increased exploration and other industrial activities after the building of a new road into a previously secluded area).
- » **Temporal:** The scope of time considered which may include past, present and future changes.
- » **Vulnerability:** The lessened ability to withstand the effects of harm or disturbance due to adverse effects suffered in the pre-project circumstance. Related to the concept of resilience. Typically, high vulnerability is correlated with low resilience and low vulnerability is correlated with high resilience.

Principles

The FNMPC provides guidance for major project assessment of cumulative effects in Principle 8 of its *Major Project Assessment Standard*. Designed to be read by proponents and the government, these requirements provide a framework for an overall assessment of cumulative effects. Drawn from this work, the following principles reflect a consideration of cumulative effects assessment through a Cultural Rights lens and represent a series of principles that may be considered.

- » Cultural cumulative effects assessments should consider impacts to Cultural Rights across a large landscape and/or the full extent of a Nation’s traditional territory. This area may cross jurisdictional boundaries, and some of this area may no longer be accessible. Cultural cumulative effects should therefore include the consideration of more than just “local” impacts.
- » Cultural cumulative effects assessments should encompass both human and natural drivers of change and consider the interconnectivity between various elements of a landscape and Indigenous culture. For example, a participant in the Spirit of the Land Workshop noted that, in their territory, “Forestry has not only damaged the forest, but it’s also damaged the lake, which then damages the culture and the health of the people” (SOTL Workshop, Feb. 2025). Considering how specific effects interact with specific aspects of Cultural Rights can strengthen a Cultural Rights assessment by meaningfully grounding it in concrete details. Data on potential impacts to the environment can often be obtained through government or proponent studies, but cultural cumulative effects can only be accurately described by the communities themselves.
- » Cultural cumulative effects assessments should consider a time frame which extends into the recent and distant past, as well as the likely (i.e., predictable) future. This means that known likely future projects – sometimes called “reasonably foreseeable future developments” - and other human caused changes such as climate change should be integrated into cultural cumulative effects assessment. Similarly, cultural cumulative effects assessments should take into consideration how cultural practices have changed over several generations.

- 1** Cultural effects assessments should evaluate cumulative effects and trends of change to meaningfully capture how impacts have accumulated over time, to accurately assess current vulnerabilities, and to anticipate the potential future condition of Cultural Rights and values according to the assessed trajectory of change.
- 2** The significance of cultural cumulative effects should be compared to past or less disturbed conditions (e.g., during pre-contact or pre-industrial periods) as opposed to current conditions which may already represent accumulated impacts and therefore serve as a flawed baseline against which to assess project-specific impacts.
- 3** Additionally, thresholds of acceptable change, identified by Indigenous Nations themselves, should be incorporated into cultural cumulative effects assessments to better understand discrepancies, where they exist, between the current condition of a given Cultural Right and the appropriate baseline against which those conditions can be evaluated. This can also point to ways in which the practicability of a cultural right may be enhanced or diminished.



Summary

A cumulative effects assessment includes the consideration of impacts that arise from incremental and/or combined effects from past, present, and future human actions. Tool #2 can help develop an understanding and contextualization of a proposed project with respect to past changes, developments, challenges, etc. This may result in a more detailed assessment of potential project impacts to culture. For methods, instructions, and examples, consult the Guide.

For further information, some examples of successful Indigenous cumulative effects studies include the resources listed below. While these cumulative effects assessments are not specific to Cultural Rights, the approaches may be applied to a cultural context:

- » [Samson Cree Nation Cumulative Effects Assessment](#): Updated Analysis for Selected Valued Components Specific to the Edson Mainline Expansion Project.
- » [Ktunaxa Nation Title, Rights and Interests](#): Revelstoke Generating Station Unit 6 Project Environmental Assessment Certificate Application (see in Part C).
- » [Cumulative Effects on the Aboriginal Rights and Interests of Samson Cree Nation](#): A preliminary desktop analysis of Valued Components in the project affected area of NOVA Gas Transmission Ltd. (NGTL) – 2021 System Expansion Project.
- » [Okanagan National Alliance Title, Rights and Interests Submission to the Revelstoke Generating Unit 6 Project Environmental Assessment Certificate Application](#): A study that implements a cumulative-effects lens to holistically assess project effects on the rights and interests of the Okanagan Nation.
- » [Blueberry River First Nations' 'Review of the Approach to Cumulative Effects Assessment in Spectra Energy's Environmental Assessment Certificate Application for the Westcoast Connector Gas Transmission Project'](#): A report commissioned by Blueberry River First Nation that highlights the key deficiencies of the proponent's cumulative effects assessment, which primarily stem from a lack of integration of Blueberry River First Nations' traditional knowledge with respect to their rights and interests.

Tool 3

Identifying Impact Pathways, Conducting an Effects Characterization, and Evaluating the Severity of Potential Impacts

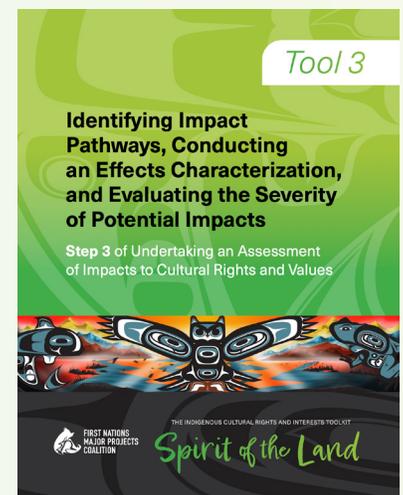
Introduction and Purpose

Following the identification and documentation of Cultural Rights, and the establishment of the degree of cumulative effects on those Cultural Rights to date, the next steps in assessing a major project's potential effects on Cultural Rights are:

- 1** To establish valid impact pathways whereby the project in question has the potential to interact, both positively and negatively, with the exercise of Cultural Rights.
- 2** Conduct an evaluation of committed-to project mitigation measures to see if and how they will reduce potential project impacts to Cultural Rights. This will result in the determination of residual, or “left over”, impacts to the Cultural Rights.
- 3** Conduct an effects characterization using an approach acceptable to the Indigenous Nation. In this characterization, each potential residual impact on Cultural Rights from the proposed project can be assessed according to characterization criteria such as likelihood, magnitude, and scale, among others. This will allow for a determination of severity of impacts.

Identifying impact pathways is necessary for evaluating the potential effectiveness of committed-to mitigation measures. It allows for an accurate assessment of how mitigation measures will potentially intersect with impact pathways to reduce project impacts on Cultural Rights, whether residual impacts will remain after the application of mitigation measures, and what the implications of those residual impacts will be for Cultural Rights.

Subsequently, a clear and thorough assessment of residual effects through an effects characterization will help an Indigenous Nation engaging in an IA to determine the acceptability of residual impacts and



identify specific areas where additional avoidance, mitigation, and restitution measures are required. While avoidance is generally preferred, it is not always possible, and impact minimization must be done through mitigation measures. Restitution may be needed if avoidance and minimizations are not possible or sufficiently effective, and adverse residual effects on Cultural Rights remain after mitigation (see Tool #4: Accommodating Potential Impacts and Cumulative Effects Through Restitution). It is also important to note that avoidance/mitigation and restitution are not mutually exclusive approaches. In fact, it is rare for a project's mitigation measures to reduce all impacts even when mitigation measures are robust and Indigenous Nations have had input. An effects characterization will allow a Nation to determine ways that avoidance, mitigation, and restitution can be used together to address residual impacts to Cultural Rights.

Throughout the assessment process, and particularly during effects characterization and determining the severity of impacts, Indigenous Nations reserve the right to identify additional conditions to avoid, reduce, or compensate for residual impacts on Cultural Rights beyond those already committed to by the proponent or applied by the Crown.

TERMINOLOGY

The following terminology is used throughout this Tool. Definitions for each term are provided below.

- » **Avoidance:** Avoidance is the most preferred approach of dealing with potential project impacts as it would see an impact not occur at all. Avoidance can also be the most difficult type of measure to apply because it often requires the project to be substantially modified, or expensive and/or time-consuming measures adopted.
- » **Cultural Indicators:** Cultural indicators are measurable or otherwise observable parameters used to measure and report on the status and trends of Indigenous culture. Cultural indicators are used to provide qualitative and quantitative data to support evaluating the significance of potential impacts of major projects on culture.
- » **Effects:** Changes to the environment or to health, social, or economic conditions and the positive and negative consequences of these changes.
- » **Mitigation:** Mitigation is any action that is designed to avoid, reduce the severity of, or offset/compensate for a potential project effect. This can be done in many ways, from modifying the project design or moving the location of project components, to improving environmental management systems, among other options. Monitoring is not considered mitigation.

- » **Residual Effects:** The adverse effects of a project on a Valued Component or right likely to remain after committed-to mitigation measures are applied; essentially the effects of a project that are unlikely to be fully mitigated with committed-to measures in place.
- » **Resilience:** The ability to be insulated from or recover from harm or disturbance. A person, community, or environment with low resilience is more likely to be seriously adversely affected by a development than one with higher resilience.
- » **Restitution:** Restitution involves compensation for residual impacts, whether that be financial, restoration/protection of the impacted Cultural Right, or another form of offsetting that provides meaningful compensation for an adverse impact on (in this case) a Cultural Right..
- » **Risk Perception:** The judgements that people make about the characteristics and severity of a risk. Risk perception can be influenced by the historical, social, religious, cultural, political, and economic factors associated with those at risk and their understanding of the physical works and activities that create the risk and therefore varies among different population sub-groups and individuals.
- » **Valued Component:** cultural, environmental, economic, health, social, and other elements of the natural and human environment that are identified as having scientific, social, cultural, economic, historical, archaeological, or aesthetic importance.¹⁴
- » **Vulnerability:** The lessened ability to withstand the effects of harm or disturbance due to adverse effects suffered in the pre-project circumstance. Related to the concept of resilience. Typically, high vulnerability is correlated with low resilience and low vulnerability is correlated with high resilience.

Principles

Drawing from and building on the guidance principles contained in the FNMPC's *Major Project Assessment Standard* (2019) and *Guidance Appendices to the Major Projects Assessment Standard* (2020), The following principles may be relevant when identifying impact pathways, conducting an effects assessment, and evaluating the severity of potential impacts on Cultural Rights:

- 1 The identification of impact pathways and the characterization of effects and determination of severity should be grounded in the Indigenous Nation's legal system and should take into consideration any policies, laws, and norms that are applicable.

¹⁴ Impact Assessment Agency of Canada, "Technical Guidance for Assessing Cumulative Environmental Effects under the Canadian Environmental Assessment Act, 2012," guidance - legislative, March 5, 2018, <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/assessing-cumulative-environmental-effects-ceaa2012.html>.

- 2** Impacts on Cultural Rights, and on the effective exercise of those rights, have complex pathways and outcomes; adequate time and care must be taken to meaningfully assess impact pathways in a way that acknowledges and addresses this complexity.
 - » Indigenous Nations can call for a “Key Line of Inquiry” approach, where greater time, funding and focus is placed on priority concerns identified by affected Indigenous Nations.
- 3** Impacts to both tangible and intangible cultural values should be considered.
- 4** The approach to identifying project pathways and conducting an effects assessment should prioritize and emphasize community-identified concerns related to potential project effects on their Cultural Rights. Emphasis should be placed on the protection of those groups who will be most affected by project impacts and those most vulnerable to impacts.
 - » The metrics (e.g., likelihood, magnitude, etc.) applied in the effects characterization should be selected based on the Indigenous Nation’s preferences and guided by the Indigenous Nation’s specific concerns. By developing a community-focused approach for evaluating the potential impacts of major projects, including relevant historical context, community-focused criteria, and community-focused thresholds, communities will be more effective in defining cultural impacts on their own terms.
 - » The characterization of various potential project impacts should be assessed in a consistent and methodological fashion, using a schema developed by the impacted Indigenous group.
- 5** Impacts must be interpreted through the filter of culture holders, as the severity of impacts on cultural resources is culturally defined. The health of a right and practice should be considered.
 - » Each Nation may approach the evaluation of severity differently. In some cases, Nations may choose not to determine severity of impacts to each separate category of right and may instead emphasize the severity of the project as a whole and seek solutions that best defend their Cultural Rights in face of the project.
 - » Thresholds of severity may be designed by the community and may reflect impacts to spiritual practice, traditional use, and subjective community-defined ways of living.
- 6** The assessment of the severity of potential adverse and beneficial cultural effects arising from a proposed project must be given the same effort and prioritization as biophysical and socio-economic effects.

Summary

Tool #3 provides some options and guidance for the identification of impact pathways and the characterization of effects and determination of severity. The Guide provides details on standard approaches, but it is important to note that each Indigenous Nation may wish to approach the identification of impact pathways and the characterization of effects in a different way. For example, when determining the severity of residual effects, it may be beneficial to emphasize the severity of the project as a whole, in some cases. In others, it may be better to determine the severity of impact to the category of right, or to individual Cultural Rights.

This process of characterizing project effects and determining impact severity can help an Indigenous Nation to define cultural impacts in their own terms. It is therefore important that the identification of impact pathways and the characterization of residual effects are grounded in a community's historical context (as determined in Tool #2: Characterizing Existing Cumulative Effects on Indigenous Cultural Rights). This will allow for the consideration of cumulative effects and varying thresholds of change.

Tool 4

Addressing Residual Impacts to Cultural Rights

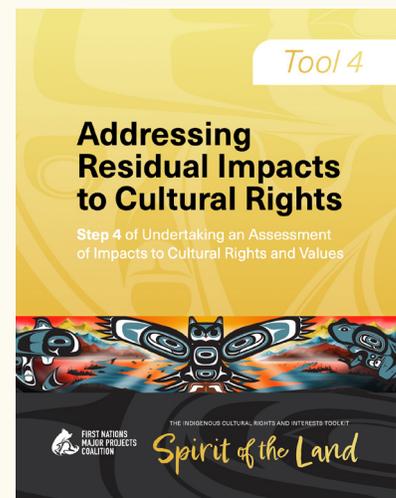
Introduction and Purpose

Once residual effects of a project are identified, they must be addressed. Indigenous Nation systems should serve as the vehicles for assessing the decisions presented in response to impacts by assessing whether certain impacts of a project can be avoided, and if so, how; whether mitigation measures can be implemented to reduce impacts; or whether restitution is required for impacts that can't be mitigated. In some cases, where potential impacts are unacceptable, the Indigenous Nation may seek the termination of a project.

Implementing avoidance and mitigation mechanisms is often done collaboratively with proponents and government and can be a highly technical process. As such, this Tool focuses on restitution for residual cultural impacts. The development of restitution mechanisms should be Nation-driven and grounded in the affected Nation's context and worldview.

The decision to seek restitution should be taken only after careful consideration, as it may impact the Nation's position in other realms. For example, if a Nation seeks to protect its Cultural Rights in a Canadian court, previous acceptance of restitution may prejudice their legal position. However, in cases where litigation is not being considered, restitution can be a way for a Nation to receive compensation if the project proponent is unable or unwilling (alone and in combination with Crown conditions or measures) to sufficiently reduce project impacts to the Nation's Cultural Rights. Prior to engaging in discussions on restitution with a project proponent, an Indigenous Nation should seek legal advice to ensure its legal rights are preserved prior to entering an agreement with a project proponent.

While FNMPC recognizes that the IA system is a flawed and evolving set of regulations and processes, this Tool is intended to provide transparent information that Nations can use at their discretion to make their own determinations about consent, mitigation, and compensation.



TERMINOLOGY

The following terminology is used throughout this Tool. Definitions for each term are provided below.

- » **Cultural Offsetting:** a form of non-monetary restitution that is **not** directly linked to the specific geographic location or specific kind of cultural value being impacted. These initiatives work *indirectly* to address the lost or diminished opportunity to receive benefit from, or to exercise, a Cultural Right.
- » **Cultural Repatriation:** processes that return lost cultural property (often tangible cultural heritage) to the rightful owners.
- » **Cultural Restitution:** processes that address residual adverse impacts on a Cultural Right or rights, including restoring the practicability of a Cultural Right to its original state, offsets of equal or greater value to cultural losses, or financial compensation for cultural losses.
- » **Cultural Restoration/Protection:** any action that works to *directly* restore or return an impacted Cultural Right, or aspects of the Cultural Right, back to a desired condition. These initiatives may be connected to either a specific geographic location or Cultural Right being impacted by a project and focuses on the protection and restoration/revitalization of specific Cultural Rights such as language, tangible cultural heritage, etc.

Principles

The following principles may be considered when addressing residual cultural impacts:

- 1** There should be a focus on cultural impact avoidance as a priority, with adequate minimization and compensation measures demonstrably employed where impact avoidance cannot be assured.
- 2** Indigenous Nations should be included, or allowed to lead, the development and implementation of avoidance, mitigation, and restitution measures to ensure that they meet their needs and requirements.
- 3** Where avoidance of cultural impacts cannot be achieved, Indigenous communities should be involved in verifying the nature and magnitude of all residual adverse effects on culture prior to a determination being made on what accommodation measures (i.e., offsets, compensation) are required.

4 Addressing residual cultural impacts should include the consideration of reconciliation, namely the possibility and opportunity for potential beneficial impacts to culture arising from a project. A project should do more than “not harm” an Indigenous community; it should bring about a net benefit.

- » Indigenous Nations must have access and assistance with capacity building measures, such as funding and consultants, if the Nation does not already have the capacity to evaluate and negotiate appropriate restitution measures. This funding and support must come from the government or proponents, as appropriate. Ideally, this capacity-building will be long-term and beneficial for the Nation into the future. Support must be based on the specific needs of each community.

The following principles may be considered when pursuing *avoidance* of residual cultural impacts:

- 1** Indigenous Nations should be able to determine contexts in which impacts to Cultural Rights are non-negotiable and must be avoided at all costs. For example, there may be some locations so valued and sensitive that it is not possible to mitigate adverse effects to them through any means other than outright avoidance.
- 2** High-value cultural sites/cultural landscapes should be avoided and maintained intact with appropriately sized protective buffers placed around them, as determined by affected Indigenous Nations.

The following principle may be considered when pursuing *mitigations* for residual cultural impacts:

- 1** Cultural monitoring plans and their implementation must be agreed to and preferably conducted by the Indigenous Nation themselves. However, it must also be kept in mind that monitoring does not constitute a form of mitigation and should not be treated as such.

The following principles may be considered when pursuing *restitution* for residual cultural impacts:

- 1** Restitution can take many forms, including, but not limited to, offsetting, restoration, and financial compensation.
- 2** Negotiations about restoration, offsetting and compensation measures must be culturally sensitive, and trauma informed. Negotiations done throughout the assessment process may lead to more integrated decision-making. It is important to observe cultural protocols when engaging in these negotiations.
 - » Internal capacity to negotiate should be developed beforehand, this may be in the form of a dedicated negotiation staff member, or training for Nation leadership and decision-makers.

- 3** The trade-offs between likely adverse impacts on a Nation or community's Cultural Rights and beneficial impacts in other areas of value to the same group must be:
- Understood (i.e., well characterized with a relatively high degree of confidence in the predicted outcome, relatively free from uncertainty).
 - Shared with the Indigenous Nation in an acceptable format, and
- » Acceptable to the Indigenous Nation, with the appropriate formal consent processes set out by the Indigenous Nation.
- » Restitution practices, such as restoration of a cultural site, should be led - planned, managed, and implemented - by the affected Indigenous Nations themselves. Cumulative effects studies can help a Nation to understand and communicate existing impacts and set a desired goal for restoration.
- 4** Wherever possible, restitution mechanisms should do more than simply reduce negative impacts, they should also ensure and promote benefits for the community.
- 5** When the impacted Indigenous Nation requests it, all reasonable efforts shall be given by all parties to find non-monetary restitution measures to protect or restore practicability of Cultural Rights, before considering financial compensation.
- 6** In determining the nature and extent of overall restitution owed to an impacted community, cumulative effects must be taken into consideration. Crown agencies may be required to get involved, including in the identification of complementary measures to protect and promote Indigenous Cultural Rights that the Crown will support over and above proponent commitments and Crown conditions on the proponent.
- 7** Indigenous communities should be able to identify their preferred means of restitution in accordance with their own institutions and governance systems.
- » In order to allow Indigenous communities to identify their preferred means of restitution, they must be provided with the time, funds, and resources necessary to make these assessments. This includes conducting relevant studies, engaging with leadership and community members, determining what works best for the Nation, and funds for engagement with the proponent and consultation with the Crown to ensure that measures are adopted.
 - » If financial compensation is agreed upon as appropriate for cultural restitution, it should not come with 'strings attached' for use by the Nation.

Summary

It is important to note that the decision to seek restitution should only be taken after careful consideration as it may impact the Nation's position in other realms (e.g., seeking protection of Cultural Rights in the Canadian court system). The Guide provides further information on the three primary options for restitution:

1. **Restoration:** any act that works to directly restore or return an impacted Cultural Right (or aspects of the Cultural Right) back to a desired condition (i.e., rebuilding a sacred site that has been destroyed).
2. **Offsetting:** an action that works indirectly to address the lost or diminished opportunity to receive benefit from, or to exercise, a Cultural Right (e.g., offsetting impacts to a sacred area by transferring lands located elsewhere in the Nation's territory to the control of the Nation).
3. **Compensation** (discussed further in Tool #5: Considering Financial Compensation for Residual Effects to Cultural Rights).

These forms of restitution are not mutually exclusive and can be used in combination to best support the protection and promotion of the Nation's Cultural Rights and related interests.

This Tool provides a decision tree to help Indigenous Nations determine a desirable restitution mechanism or mechanisms for project-specific and cumulative effects on Cultural Rights identified in Tools #1 to #3.

Once the desired form of restoration or offsetting is determined, this Tool provides some guiding questions to help Indigenous Nations determine the resources necessary in order to establish and maintain the program or activity. The Nation may then determine how funding for the measure will be provided. This will help set up the Indigenous Nation to negotiate the desired form of restitution with the proponent and/or the Crown.

Tool 5

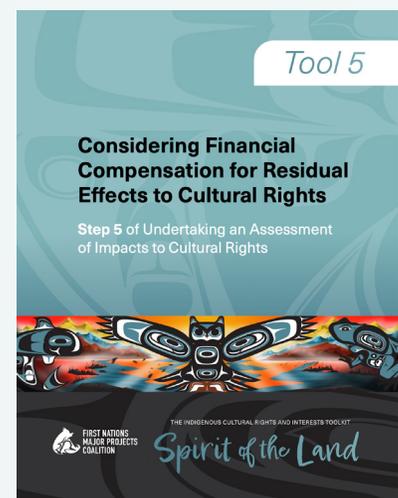
Considering Financial Compensation for Residual Effects to Cultural Rights

Introduction and Purpose

This Tool is designed to support Indigenous Nations in exploring possible systems to use in situations where financial compensation for an effect on a Cultural Right is required or desired. This Tool does not seek to quantify the economic value of the Cultural Right but rather explore various ways in which financial compensation (likely alongside other restitution and mitigation measures) for the loss of some portion of that Cultural Right, can be fairly calculated. As such, this Tool offers a framework for discussing opportunities for the compensation of cultural impacts.

As identified in Tool #4: Addressing Residual Impacts to Cultural Rights, the three forms of restitution are not mutually exclusive. For example, some forms of financial compensation could be one component in cultural offsetting (e.g., funding that will be used to develop a Cultural Centre may be deemed to be part of an overall offsetting package that is needed to counterbalance the loss of an on-the-land teaching site). Hence, financial compensation can be viewed by different Nations as either a vehicle to achieve greater control over cultural restitution efforts, or a slippery slope that could pave the way for industry and government to gain “permission” to proceed with projects that will harm Cultural Rights.

On a practical level, financial compensation can offer Nations greater flexibility and control over the final form of restitution, such as having direct control over funding, rather than having a co-administered funding program. Indigenous Nations can apply financial compensation to initiatives of their own choosing, such as the purchase of lands, or ongoing cultural or language revitalization programs, among many other options. However, assigning a monetary value to impacts to Cultural Rights may be an ethically challenging, if not impossible, way to achieve a Nation’s restitution objectives. Trying to protect intangible cultural interests challenges conventional approaches to the assignment of monetary values to cultural impacts, and therefore requires more complex, collaborative evaluation and negotiation models that prioritize the perspectives and objectives of Indigenous Nations. However, even with better conceptual models, some Nations may still deem impacts to their Cultural Rights to be “non-compensable” and therefore defy monetary evaluation.



To achieve fair and just outcomes for addressing cultural impacts, some Nations may prefer to focus on offsetting and restoration approaches instead of financial compensation. This Tool is relevant to an Indigenous Nation's approach to restitution of impacts to Cultural Rights if the following three conditions are met:

- 1** The cultural impact assessment (*outlined in Tools #1 to #3*) predicts a major project will result in residual impacts on Cultural Rights that cannot be avoided/fully mitigated.
- 2** The Indigenous Nation recognizes that the major project may proceed despite potential residual impacts on Cultural Rights (with or without the Indigenous Nation's Free, Prior and Informed Consent), and the Indigenous Nation has determined to seek restitution for the residual impacts to Cultural Rights; and
- 3** The conclusion of *Tool #4* is that the preferred approach (or one of the preferred approaches) to restitution is *financial compensation*.

In this Tool, two primary approaches to determining financial compensation for impacts to Cultural Rights are identified: a market-based approach and a community-based values approach.

TERMINOLOGY

The following terminology is used throughout this Tool. Definitions for each term are provided below.

- » **Community-Based Values Approach:** a method for determining financial-based compensation where the community that may suffer (or have already suffered and will continue to suffer) the impacts on its collective Cultural Rights are asked to determine a hypothetical financial value for such losses (e.g., a community is asked to assign a monetary value to a Cultural Right based on what the right means to them in terms of quality of life, psycho-social well-being, and socio-cultural well-being).
- » **Market-Based Approach:** a method for determining financial-based compensation where a value is assigned to a Cultural Right based on what that right would cost "on the market" (e.g., the loss of knowledge could be compared to how much it costs for an individual to attend school for a certain number of years).

¹⁵ For more information on market-based approaches and community-based values approaches, see the works by Timothy L. McDaniels and William Trousdale, "Resource Compensation and Negotiation Support in an Aboriginal Context: Using Community-Based Multi-Attribute Analysis to Evaluate Non-Market Losses," *Ecological Economics* 55, no. 2 (November 1, 2005): 173–86, <https://doi.org/10.1016/j.ecolecon.2005.07.027>; Robin Gregory and William Trousdale, "Compensating Aboriginal Cultural Losses: An Alternative Approach to Assessing Environmental Damages," *Journal of Environmental Management* 90, no. 8 (June 2009): 2469–79, <https://doi.org/10.1016/j.jenvman.2008.12.019>; Philippe Hanna et al., "The Importance of Cultural Aspects in Impact Assessment and Project Development: Reflections from a Case Study of a Hydroelectric Dam in Brazil," *Impact Assessment and Project Appraisal* 34, no. 4 (October 1, 2016): 306–18, <https://doi.org/10.1080/14615517.2016.1184501>; Tobias Plieninger et al., "Assessing, Mapping, and Quantifying Cultural Ecosystem Services at Community Level," *Land Use Policy* 33 (July 1, 2013): 118–29, <https://doi.org/10.1016/j.landusepol.2012.12.013>; Robin Gregory et al., "Compensating Indigenous Social and Cultural Losses: A Community-Based Multiple-Attribute Approach," *Ecology and Society* 25, no. 4 (2020): 1–13, <https://doi.org/10.5751/ES-12038-250404>.

Principles

The following principles may be considered by an Indigenous Nation wishing to develop a model for evaluating the financial value of Cultural Rights adversely impacted by a major project. These principles may also apply when a Nation is seeking to determine and negotiate a financial value for cultural restoration and/or cultural offsetting programs.

- 1** The assessment of compensation for cultural loss should be conducted by the Indigenous community itself, or on the advice and direction of the Indigenous community.
- 2** Indigenous communities should be compensated for the time it takes to negotiate compensation.
- 3** All Knowledge Holders, land users, and Elders engaged in negotiation and data gathering related processes should be appropriately compensated.
- 4** Indigenous communities should be provided with adequate time and resources (including capacity supports) to properly engage in the compensation negotiation process.
- 5** Compensation negotiations should be culturally sensitive and trauma-informed, considering relevant context and cultural sensitivities.
- 6** Compensation negotiations should account for the holistic nature of cultural losses.
- 7** Compensation values should be renegotiable as situations change with time, and subject to inflation calculations where they are paid out over time.
- 8** The method used to calculate compensation should follow a clear and logical process and should be transparent, repeatable, and meaningful.
- 9** Both tangible and intangible values should be included in the assessment of compensation. Impacts such as mental distress and psychological strain should be considered alongside effects such as the disruption of traditional practices.
- 10** While the determination of compensation should include expert information and documentation, the process should prioritize written and oral information sources that acknowledge the direct experiences of the community.

Summary

Financial compensation for cultural losses is a complex and often contentious process that many Nations may choose not to pursue. While it can provide greater control over restitution, it also risks becoming a “quick fix” for industry and government, allowing them to sidestep avoidance or mitigation. Some Nations may view cultural impacts as “non-compensable” and instead prioritize restoration or offsetting approaches.

For those that do consider financial restitution, a community-based values approach offers a more holistic framework for assigning value to cultural losses. Methods for doing so are outlined in the Guide, which supports the development of an economic figure grounded in each Nation’s values, rights, and laws.

Duration of compensation is also critical. Treaty annuities were designed as perpetual payments to reflect the ongoing nature of land sharing. Similarly, when impacts to Cultural Rights are permanent or intergenerational, long-term or recurring compensation may be more appropriate than one-time payments.

An Indigenous Nation may negotiate economic benefits with a project proponent in the form of an Impacts and Benefits Agreement, or similar form of agreement, or an equity partnership, and therefore the Indigenous Nation must seek legal and financial advice to determine where any such compensation for impacts on Cultural Rights fits within, or outside of, these other project agreements,

Even so, assigning financial value to Cultural Rights remains highly challenging. Monetary figures cannot capture the spiritual, social, and intergenerational dimensions of these rights, and risk being misinterpreted as a simple “price to be paid.” This can undermine investment in more meaningful forms of restitution, avoidance, or mitigation. For these reasons, financial compensation is likely to remain one of the most debated elements of this Toolkit, and Nations are encouraged to weigh its challenges carefully before applying it.

Conclusion

Indigenous culture is a complex, holistic concept consisting of both tangible (village or settlement sites, harvesting complexes and site, burial sites, etc.) and intangible (relationships, stories, knowledge, ways of life, etc.) elements and expressions. International law such as the UN Declaration and federal and provincial UN Declaration-based legislation seeks to protect Indigenous Cultural Rights through guaranteeing a right to a “traditional way of life,” complete with distinct “cultural identity, social structure, economic systems, customs, beliefs and traditions.” In Canada, Indigenous Cultural Rights have commonly been asserted through the lens of Section 35 rights, including the right to a way of life. The federal UNDRIPA, however, represents a unique opportunity for the formalization of the protection of Cultural Rights in Canada through legislation.

Canadian IA processes often lack a distinct category for assessing cultural impacts, which are commonly lumped in with broader environmental or socio-economic assessments, where they are considered at all. It is essential to “raise the bar for meaningful inclusion of Canadian Indigenous Nations in major project assessment” by engaging Indigenous communities early in the major project proposal review process, allowing communities to lead independent studies, and provide their own definitions of what is and what is not important. This will allow cultural impact assessments to accurately identify cultural values and rights most at risk and plan avoidance, mitigation, and compensation mechanisms appropriately.

In general, there is the need to advance methods for assessing historic, present, and future cultural loss as a result of major projects; the need to include cumulative effects and multiple forms of value into the determination of restitution for cultural losses; and the need to ensure Indigenous communities are able to self-identify impacted values as well as assign significance to each. To address cultural losses, methods of restitution which are not financially based (such as offsetting and restoration programs) must be further explored. This Toolkit is an initial attempt in the direction of addressing these concerns.

Prepared by:



With support from:



Disclaimer

The Indigenous Cultural Rights and Interests Toolkit (the “Toolkit”) has been developed by the First Nations Major Projects Coalition (FNMPC) and does not represent the perspectives of the federal, provincial or territorial governments, nor of proponents. It also does not represent the specific perspectives of individual Indigenous Nations, as each may have their own approach to assessing impacts on Cultural Rights based on the laws, methodologies, protocols, and processes of that Indigenous Nation. The Toolkit is meant as a guide, not a prescriptive tool. Legal advice is recommended prior to engaging with either the Crown and/or proponents.

The Toolkit acknowledges systemic barriers in impact assessment (IA) processes, which often result in the exclusion of Indigenous Nation decision-making. This has led to proponents underestimating impacts on Cultural Rights and the significance of such impacts on Indigenous Nations. While this Toolkit acknowledges the deficiencies in Cultural Rights protections, it does not challenge the relative distribution of power between Indigenous Nations and other jurisdictions. However, by presenting options throughout the Tools, this Toolkit seeks to enhance the technical capacity of Indigenous Nations when exercising self-determination. The Toolkit is designed to be led by Indigenous Nations. Industry and non-Indigenous governments must not unilaterally apply the Toolkit without the express written agreement of the affected Indigenous Nation.

Cultural Rights and values must be treated as sensitive information. The Toolkit references the principles of Indigenous Nations Ownership, Control, Access, and Possession (OCAP®), which are not recognized in law or policy by other governments. While Indigenous Nations may assert that OCAP® protects their sensitive cultural information from public disclosure, information shared with governments may not remain confidential due to privacy laws and procedural fairness. Therefore, Indigenous Nations are advised to exercise caution when sharing information in such processes.

In this Toolkit, the term “Cultural Rights” is used as a working term to describe the full extent of Indigenous Rights as recognized under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). While “Cultural Rights” in international law generally refer to the universal right of all peoples to participate in and benefit from cultural life, this document adopts the term more broadly and specifically in relation to Indigenous Nations.

For the purposes of this Toolkit, “**Cultural Rights**” includes—but is not limited to—the rights of **Indigenous peoples**. The use of this term is not intended to limit or narrow the scope of Indigenous Rights, but rather to provide a consistent reference point throughout the Toolkit. This Toolkit looks to each individual Indigenous Nation to articulate their own understanding of their Cultural Rights, rather than attempting to characterize the legal dimensions of Cultural Rights overall.

INDIGENOUS CULTURAL RIGHTS AND INTERESTS TOOLKIT

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