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Impact Assessment and Responsible Business Guidance Tools in the Extractive Sector: Implications for Human Rights, Gender and Stakeholder Engagement

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Impact Assessment and Responsible Business Guidance Tools in the Extractive Sector: Implications for Human Rights, Gender and Stakeholder Engagement

Final Report for the SSHRC Knowledge Synthesis Grant: Informing Best Practices in Environmental and Impact Assessments

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[September 2020]
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ACKNOWLEDGMENTS

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EXECUTIVE SUMMARY

Introduction
Extractive companies (mining, oil & gas) play a major role in the Canadian economy, and their actions have multi-faceted effects on the communities in which they operate, whether extractive activity takes place within or outside Canada. Currently, a wide range of Responsible Business Conduct (RBC) guidance tools are promoted to extractive companies. Most extractive companies are also obligated to comply with Impact Assessment (IA) laws whether operating within or outside Canada. While the legal framework of IA and the various RBC guidance tools have some obvious overlaps, their interrelationship has been understudied in the literature. This knowledge synthesis project is an attempt to highlight this intersection and encourage the development of research and scholarship in the field. We believe that this study will aid in the formation of a more effective framework for the use of human rights respecting RBC tools and facilitate the complementary and/or integrated operation of IA and RBC regimes in Canada.

Objectives
This report aims to identify RBC tools referenced in the literature as relevant and/or promoted to Canadian extractive companies operating within and outside Canada. While not appraising or pronouncing on the quality of RBC tools, we consider the different actors that promote these diverse tools and whether there is a coherent framework for the efficient and effective application of current and future tools. We focus on RBC tools on human rights, stakeholder engagement, the rights of Indigenous peoples, and the rights of women and girls. Further, we review the position of scholars on the relationship between RBC and IA.

Methodology
This knowledge synthesis was carried out in phases. We first collected and reviewed published and publicly available literature available to Canadian companies to guide RBC and, developed a preliminary list of relevant RBC tools. We then identified literature that expanded on how these RBC tools have been used in IA by Canadian extractive companies, especially with regard to Indigenous relations, stakeholder participation, gender, and human rights. We drew primarily from materials published between 2009 and 2019. Materials from other jurisdictions were examined in order to identify global best practices.

Results
The key findings have been captured under four sub-headings:

1. **RBC tools available to the Canadian extractive sector**
   From the literature, we identified ninety-nine RBC tools directly or indirectly relevant to Canadian extractive companies. The top promoters of the tools include international organizations (37), industry (23) and the Canadian government (13). Indigenous governments (12), Provincial governments (8), NGOs (3), and multi-stakeholder initiatives (3) are other identified promoters. While international organizations promoted the highest number of tools, industry-promoted tools are the most widespread covering 10 of the 13 identified thematic areas. All categories of promoters provided guidance tools on the participation of Indigenous peoples, whereas only half provided guidance tools in relation to gendered impacts. Fewer still provided guidance on human rights due diligence, and only a small number provided guidance on addressing climate change. Our findings show a proliferation of RBC tools promoted to the Canadian extractive sector, yet, at the same time, a lack of any coherent framework for effective and efficient application of existing and future tools.

2. **Relationship between RBC tools and the Canadian extractive sector and how the RBC tools address human rights, gender and stakeholder engagement**
   While due diligence is a central theme in most RBC tools on stakeholder and Indigenous engagement, human rights, and gender, we identified only four tools explicitly focused on due diligence. None of the due diligence tools are promoted by Canadian institutions (government, industry, Indigenous governments and NGOs) and the Canadian government has not mandated compliance with due diligence tools promoted by international organizations. The need for Canadian legislation mandating human rights due diligence (HRDD) has been emphasised in the literature. Failure by extractive companies to adhere to the prescriptions of HRDD tools has been found to have adverse implications for extractive companies including financial loss and loss of social licence to operate (SLO) and goodwill. Despite the connection between HRDD and SLO, none of the four direct due diligence tools made specific reference to SLO. The recognition of rights holders and stakeholders in HRDD tools
is also worth noting. While stakeholder engagement is a common subject in the Canadian literature, the distinction between stakeholders and rights holders is rarely made. Within Canada, stakeholder engagement and gender analysis are primarily discussed in relation to Indigenous peoples. With respect to operations outside Canada, Canada’s Feminist International Assistance Policy (FIAP) is the only identified gender-related federal government promoted tool, yet, it makes no reference to the effects of resource extraction on the human rights of women and girls.

3. **What is the intersection between RBC Tools promoted by the Canadian Government, due diligence, and IA, and what are the implications of this intersection for stakeholder engagement?**

   While IA and HRDD share similar objectives, their relationship is understudied in the literature. The 2018 OECD Due Diligence Guidance for Responsible Business Conduct, exceptionally, highlights the relevance of different modes of impact assessment (environmental impact assessment (EIA), environmental and social impact assessment (ESIA), and Human Rights Impact Assessment (HRIA)) to RBC and their respective due diligence processes. RBC due diligence literature, however, commonly references human rights impact assessment either as a component, equivalence or instrument of HRDD. While a small amount of non-Canadian literature explores the intersection between IA modes like HRIA, social impact assessment and HRDD, we found no such literature in the Canadian context. There are opportunities to operationalize provisions in the Impact Assessment Act (IAA) on stakeholder engagement, Indigenous relations, gender-based analysis plus, and social effects using existing RBC and due diligence tools.

4. **What are the Global Best Practices?**

   In Australia and European countries, governments are more involved in mandating extractive companies to adhere to RBC standards, Human Rights Commissions are involved in the promotion of tools, and extractive companies in most of the countries surveyed in the literature are mandated to either conduct HRDD as in the case of France or submit statutory reports on due diligence efforts particularly on child and modern slavery as in Australia and the United Kingdom, although these are largely with regard to companies operating internationally or linked to supply chain responsibility. Australia, primarily through its Human Rights Commission, has also released detailed reports (*qua* Guidance) on the effective application of the UN Guiding Principles on Business and Human Rights and other RBC tools. The Danish Institute of Human Rights’ (DIHR) Guidance on Gender-responsive implementation of Extractive Industries projects is one of the most comprehensive tools dealing with the gendered impacts and dimensions of the extractive sector. The DIHR’s toolbox on HRIA also provides a comprehensive instrument on the intersection between HRDD and IA. Oxfam’s Gender Impact Assessment Guide also provides useful guidance for assessing the effects of extractive projects on women and girls.

**Key Messages**

1. There is a proliferation of RBC guidance tools promoted to extractive sector companies by international organisations, federal, provincial, and Indigenous governments, as well as industry, non-governmental and multi-stakeholder initiatives. Yet there is no framework for the coherent application these tools, nor do all tools provide guidance on respecting human rights to ensure support and respect for the rights of Indigenous peoples, women and girls, among other key rights-holders.

2. Different RBC tools are promoted to companies operating within Canada, and to Canadian companies operating internationally, with some overlap. There is a need for coherence and clarity on the application of international RBC tools to extractive operations within Canada, and, in particular, expectations surrounding HRDD. Federal and provincial Human Rights Commissions could be important institutions for the application of HRDD within Canada. However, attention must be paid to the role of Indigenous governance and law.

3. IA and RBC can be mutually reinforcing with RBC broadening the traditionally narrower IA regime while the best practices of typically non-binding RBC standards could be applied to develop Guidelines and/or Regulations under a binding IA regime.

4. There is need for more research on the application of RBC tools by extractive companies operating within Canada, particularly in respect of HRDD, and implications for the human rights of Indigenous peoples. There is need for research on how federal and provincial Human Rights Commissions can facilitate adherence to HRDD standards.

5. There is need for further research on how RBC, due diligence and IA intersect in the Canadian context and how the best practices of existing RBC tools and especially HRDD could be used to improve Canadian IA regimes, including federal, provincial, territorial, and Indigenous assessment processes.
<table>
<thead>
<tr>
<th>ACRONYMS</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>ACCR</td>
<td>Australasian Centre for Corporate Responsibility</td>
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<tr>
<td>AHA</td>
<td>Aboriginal Heritage Act</td>
</tr>
<tr>
<td>AHRC</td>
<td>Australian Human Rights Commission</td>
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<tr>
<td>CAO</td>
<td>Compliance Advisor Ombudsman</td>
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<tr>
<td>CEAA</td>
<td>Canadian Environmental Assessment Act</td>
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<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<tr>
<td>DFAT</td>
<td>Australian Department of Foreign Affairs and Trade</td>
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<tr>
<td>DIHR</td>
<td>Danish Institute of Human Rights</td>
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<tr>
<td>EDC</td>
<td>Export Development Canada</td>
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<tr>
<td>ESIA</td>
<td>Environmental and Social Impact Assessment</td>
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<tr>
<td>FIAP</td>
<td>Feminist International Assistance Policy</td>
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<tr>
<td>FPIC</td>
<td>Free, Prior and Informed Consent</td>
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<tr>
<td>GAC</td>
<td>Global Affairs Canada</td>
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<tr>
<td>GBA +</td>
<td>Gender-based Analysis Plus</td>
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<td>GHG</td>
<td>Greenhouse Gases</td>
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<td>Human Rights Commission</td>
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<td>Human Rights Impact Assessment</td>
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<td>Impact Assessment</td>
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<tr>
<td>IAA</td>
<td>Impact Assessment Act</td>
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<tr>
<td>ICMM</td>
<td>The International Council on Mining and Metals</td>
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<tr>
<td>IFC</td>
<td>International Financial Corporation</td>
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<tr>
<td>MAC</td>
<td>Mining Association of Canada</td>
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<tr>
<td>NCP</td>
<td>National Contact Point</td>
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<tr>
<td>NNTT</td>
<td>National Native Title Tribunal</td>
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<tr>
<td>NOAMI</td>
<td>National Orphaned/Abandoned Mines Initiative</td>
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<tr>
<td>NTA</td>
<td>Native Title Act</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>PDAC</td>
<td>Prospectors and Developers Association of Canada</td>
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<td>RBC</td>
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<tr>
<td>SIA</td>
<td>Social Impact Assessment</td>
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<tr>
<td>SLO</td>
<td>Social License to Operate</td>
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<td>SRI</td>
<td>Socially Responsible Investors</td>
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<tr>
<td>TSM</td>
<td>Towards Sustainable Mining</td>
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<tr>
<td>UNDRIP</td>
<td>UN Declaration on the Rights of Indigenous People</td>
</tr>
<tr>
<td>UNGP</td>
<td>United Nations Guiding Principles on Business and Human Rights</td>
</tr>
<tr>
<td>UNICEF</td>
<td>The United Nations Children's Fund</td>
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<td>WMI</td>
<td>Whitehorse Mining Initiative</td>
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</table>
1. **Introduction**

The Canadian extractive sector (mining, oil and gas) has interests in over 8000 properties in Canada and more than 100 other countries.\(^1\) Canada hosts the largest number of the world’s top 50 mining companies,\(^2\) outperforms any other country in terms of profitability in the global mining sector,\(^3\) and the extractive sector contributes about 40% of the country’s total domestic exports.\(^4\) The extensive reach of Canadian extractive companies is not just global. From aluminum to zinc, every Canadian province and territory hosts major extractive projects.\(^5\) This extensiveness, however, also informs the far-reaching effects of the operations of the companies on peoples and communities. Unfortunately, these impacts have often been less than positive.\(^6\) Evidence abounds as to the complicity of Canadian mining companies and governments in causing, contributing to and/or perpetuating social conflicts, corruption, outright human and Indigenous rights abuse, gender inequality and gender-based discrimination and other violence, environmental degradation, and loss of biodiversity in extractive host communities within and outside Canada.\(^7\) Governmental and non-governmental initiatives to address the negative impacts of Canadian extractive companies have been proposed over the years, focused primarily on the importance of promoting responsible business conduct (RBC).

RBC guidance is contained in both legal and non-legal instruments which encourage and/or mandate businesses to make positive contributions economically, environmentally, and socially, and to avoid or address adverse impacts caused by their direct or indirect activities.\(^8\) These tools are, however, mostly framed as voluntary measures. Our focus in this study is, primarily, on these voluntary measures or tools. For example, equating RBC to Corporate Social Responsibility (CSR), Global Affairs Canada (GAC)

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4. OEC, “Canada” [https://oei.world/en/profile/country/can/].
6. This, however, does not mean that mining cannot be done right. When approached respectfully, local and Indigenous communities are more likely disposed to supporting projects. There is a growing record of well executed mining projects in Canada which also benefit host communities. The point has been made, for example, that although concerned about the potential impacts of mining on their way of life, “Northerners ultimately hope to benefit from mining activity through well-paying jobs, support for local businesses, and the development of vibrant and healthy communities”. See Centre for the North, “The Future of Mining in Canada’s North: Economic Performance and Trends” (2013) [http://www.miningnorth.com/wp-content/uploads/2013/01/Final-13-201_FutureofMining_CFN.pdf] 43. See also Natural Resource Canada, “Good Practices in Community Engagement and Readiness” (2016) 2nd ed. [https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mineralsmetals/files/pdf/rmd-rrm/GoodPractices2ed_Eng.pdf].
describes RBC as “voluntary activities undertaken by a company, over and above legal requirements”. Although deemed voluntary, these requirements are encoded in diverse guidelines and standards. We refer to these instruments as RBC tools. While the GAC lists about twenty-two such tools, it highlights about five as instruments endorsed for Canadian extractive companies operating abroad. Our research, however, identifies ninety-nine RBC tools referenced in the literature as relevant or promoted to Canadian companies, particularly the extractive sector. Key subjects covered by these tools include Indigenous relations, stakeholder participation, gender, and human rights. To serve as a viable tool to proactively address the adverse effects of the activities of businesses, risk-based due diligence has been referenced as an essential component of RBC. Due diligence helps to identify, prevent and mitigate actual and potential negative effects.

While RBC tools are represented in the literature as a major vehicle for responding to human rights and environmental abuses by extractive companies, the role of impact assessment (IA) in the responsible business context, is less discussed. Apart from its impact identification, effects appraisal, alternatives consideration, and sound decision-making functions, IA also plays an important regulatory role. It is a legally required process that must be undertaken before prescribed major projects can proceed. While impacts considered under this process have primarily been project based and ecological, non-ecological factors are beginning to feature prominently. This is exemplified by the transition from earlier versions of the Canadian Environmental Assessment Act (CEAA) to the Impact Assessment Act (IAA). The IAA, going beyond previous iterations of the CEAA, references health, social, or economic conditions, impacts on Indigenous groups, their rights, and cultures, community and Indigenous knowledge, comments received from the public, and “the intersection of sex and gender with other identity factors” as factors to be considered when projects are being assessed. While the IAA stops short of explicitly mainstreaming human rights considerations, it potentially strengthens IA as a RBC tool. This is of relevance to the extractive industry as over 75% of assessments conducted between 2017 and 2019 under the federal IA process involved the extractive sector.

Although the due diligence component of RBC tools aligns with the objectives of IA, they are two streams which rarely intersect in practice. The 2018 OECD Due Diligence Guidance for Responsible Business Conduct, exceptionally, highlights the relevance of different modes of impact assessment (environmental impact assessment (EIA), environmental and social impact assessment (ESIA), and Human Rights Impact Assessment (HRIA)) to RBC and their respective due diligence processes. In conducting due diligence, proponents are encouraged to, where available, use information from EIA, ESIA or HRIA and other relevant assessments conducted by the company or any other third-party. Framed this way, IA is an optional component of a broader RBC framework. A closer look at the elements of the OECD Guidance, however, suggests that other than this element of embedding RBC into

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10 Ibid.
11 Ibid.
12 OECD, supra note 8 at 75.
13 Impact Assessment Act, SC 2019, c C-28, s. 22(1)(a)(g)(i)(m)(n)(s).
16 Ibid.
policies and management systems (which could be considered an aspect of strategic assessment), the other steps in the due diligence process are consistent with IA processes. There are various arguments in favour of a closer and better alignment of IA and RBC processes. Apart from the efficiencies that such alignment might bring, both processes could be enriched by such intersection and alignment. For example, a closer alignment could legally strengthen RBC due diligence processes as IA is mandated in law. Again, the relative extensiveness of RBC due diligence could potentially expand the narrow ambit of IA.

Despite the common relevance of RBC and IA to the responsible operation of the Canadian extractive sector, there is a dearth of literature on the relationship and how both regimes can work together to maximize their potentials. This knowledge synthesis report focuses on this subject. We examine existing literature on the RBC Guidance tools promoted to the Canadian extractive sector within and outside Canada, the extent to which such tools inform stakeholder engagement and the consideration of Indigenous, gender and human rights issues, and how the subject of the RBC-IA intersection has been explored. We also consider international practices on the integration of RBC-IA processes, and highlight current gaps and necessary future research for the Canadian context. This knowledge synthesis report will potentially facilitate a more efficient, integrated, and effective approach to due diligence and IA processes in the extractive sector. Rather than being considered as inconvenient duplicative processes, this study could help to jumpstart a conversation on how the various RBC instruments and the due diligence processes they require can play essential roles in IA processes. Such a dialogue would help strengthen the operationalization and actualization of the potential of Canada’s new IAA, particularly its provisions on gender, Indigenous relations, social consideration and meaningful stakeholder participation.

The findings in this knowledge synthesis report are laid out in three main parts. First, we identify key RBC guidance tools promoted to Canadian companies within and outside Canada and relevant commentaries in the literature. Second, we consider the extent to which the literature has captured how extractive companies have taken gender and human rights issues into account and how they conceptualize and foster stakeholder participation in their operations through the application of the promoted RBC Guidance tools. Third, we review the current literature on the intersection of RBC and IA in Canada and the implications for gender, human rights, and stakeholder engagement. We subsequently consider best practices, particularly, in the area of RBC-IA intersection, identify gaps and scope for future research.

17 Essentially, IA process includes screening, scoping, assessment, consideration of alternatives, mitigation, and follow up. These are consistent with RBC due diligence processes including identifying and assessing adverse impacts, mitigating adverse impacts, tracking implementation and results, communicating how impacts are addressed, and cooperating in remediation when appropriate. OECD, ibid. 21. Although strategic assessment is traditionally viewed as the environmental assessment of government policies, plans and programmes, it has been argued that such narrow conception is unhelpful. Rather Strategic Assessment should be viewed as a catalyst for generating organizational long-term cultural effects and strengthening environmental management and planning. If this view is accepted, then it is arguable that SEA is not just a government concern; that industry also has a part to play. In this sense, strategic assessment is relevant to industry and their policies and management systems. See Victor Lobos & Maria Partidario, “Theory versus Practice in Strategic Environmental Assessment (SEA)” (2014) 48 Env Impact Assessment Review 34 at 45. See also Maria do Rosário Partidário, Strategic Environmental Assessment Better Practice Guide – Methodological Guidance for Strategic Thinking in SEA (Portuguese Environmental Agency, 2012) 14; and Morten Bidstrup & Anne Merrild Hansen, “The Paradox of Strategic Environmental Assessment” (2014) 47 Env Impact Assessment Review 29 at 30.
This study is a two-part qualitative systematic review of published scholarly literature and publicly available grey literature written primarily in English. Except for landmark publications, we reviewed literature published between 2009 and 2019. First, we focused on the question of the responsible business guidance tools promoted to Canadian extractive companies within and outside Canada as captured in the literature. This phase of the research began with the identification of background materials. Background materials included relevant materials published by team members, previous synthesis reports and other relevant academic and grey literature. We also contacted experts, particularly in the field of IA, to recommend background texts. We proceeded in this manner given the considerable extensive research portfolio of team members (particularly on responsible business conduct and Canadian extractive companies (RBC)) and considering that previous knowledge synthesis reports have been produced on the Canadian extractive sector and their engagements with Indigenous and gender issues. Close to one hundred responsible business guidance instruments relevant and/or promoted to Canadian extractive companies were identified (see appendix 2). To ensure that only tools relevant to this research are listed, research assistants identified tools pertaining to Indigenous rights, gender and gender-based analysis, human rights, and stakeholder engagement. The list was subsequently reviewed by the authors, whose observations on relevance were applied to generate a final list of apt RBC tools.

In the second part of the study, we expanded the search of RBC tools to other academic and grey literature outside background texts, considered how RBC tools are used in IA processes by Canadian extractive companies and considered global best practices on how IA and RBC are deployed by extractive companies. We sourced academic literature from Novanet, Google scholar, SSRN, ISI Web of Science, EBSCO, Scopus, and Proquest Database, while the grey literature was found through searches on Google, Proquest, and EBSCO. Research assistants kept note of key words and search paths. We also used a snowball approach by considering references in sourced primary materials. Literature considered in this knowledge synthesis report includes academic and grey literature on RBC, IA and stakeholder engagement by Canadian extractive companies.

Canadian extractive companies are defined, for the purposes of this research, as any extractive company (mining, oil and gas) operating within Canada whether or not its parent company is incorporated or headquartered in Canada, and operating outside Canada where the parent company is incorporated or headquartered in Canada, or listed on a Canadian stock exchange. We paid particular attention to literature on gender impact assessment, gender-based analysis, Indigenous impact assessment, benefit sharing agreements, impact benefits agreement, social impact assessment, human rights impact assessment, sustainability assessment, and meaningful participation by Canadian extractive companies. Literature not relating to Canadian extractive companies, except under the section on global best practices, was excluded. To understand the context in which RBC tools were referenced, we shortlisted, and sample-read at least three articles per instrument and where relevant, research assistants provided a summary. In other instances where search terms generated a large volume of materials (e.g. for global best practices, extractive sector + responsible business conduct + stakeholder engagement + impact assessment generated about 16,900 results within the 2009 – 2019 timeframe), we streamlined the findings by focusing on European countries, Australia, and New Zealand. While the initial focus on Europe was due to the preliminary finding that a considerable number of sourced literature were
published in the jurisdiction, Australia was included given the similarities with Canada, particularly the history, Indigenous populations, and the prevalence of extractive companies.

A three-level writing process was undertaken, including a synthesis and analysis of initial findings and summaries, from which a draft report was produced and circulated to collaborators whose feedback was incorporated into a revised draft. The report will be disseminated to stakeholders including sectoral policy users, community and Indigenous stakeholders, women’s rights, environmental and human rights NGOs, IA responsible authorities, industry associations and scholars. The findings of the study will further be disseminated and explored at a workshop or workshops to be held in the first half of 2021. Related documents will be posted on the Schulich Law scholars digital commons together with this report and related evidence brief, online: https://digitalcommons.schulichlaw.dal.ca/ialawrbc/.
3. Results

The synthesized findings and analysis below are a product of a joint consideration of literature on RBC and IA, two areas of research which are, generally, considered to be in different siloes. From a review of the literature, it became evident that RBC tools have proliferated, particularly, in respect of Indigenous consultation. While the proliferation of RBC tools is not in itself negative, the absence of a framework for a coherent application of such tools at best leads to inefficiency and at worst provides a justification for extractive companies’ failure to adopt and apply such tools or to cherry-pick and use the least rigorous of available tools. In contrast, despite the considerable number of RBC tools on issues like Indigenous engagement, gender and human rights, climate change was not comprehensively treated in most of the tools, including those promoted by the Organization for Economic Cooperation and Development (OECD). While climate change has received more attention in IA instruments, key questions about how it applies at the project level remain. Consequently, neither RBC tools nor IA instruments provide adequate guidance to the Canadian extractive sector on how to deal with the varying dimensions of climate change in their assessment and due diligence processes. We lay out more specific results and analysis below.

3.1 What are the Responsible Business Guidance Tools Promoted to the Canadian extractive sector?

We identified ninety-nine responsible business guidance tools which are directly and/or indirectly relevant and promoted to the Canadian extractive sector. As shown in table 1, a significant number of the tools are sourced from international organizations, particularly the OECD (5), the World Bank (International Finance Corporation) (7), and the United Nations (8). The origin of RBC tools informs both their primary subject matter and their scope of application. RBC tools designed and promoted by Indigenous nations in Canada are focused on Indigenous consultation and consent processes. Of the 12 identified Indigenous nation tools, only 3 are applicable Canada-wide. Other Indigenous RBC tools are peculiar to jurisdictions (e.g. British Columbia First Nations Energy and Mining Council: First Nation Resource Participation Models) or Indigenous communities (Kluane First Nation Proponents Engagement Guide).

Table 1 – RBC Instruments for the Canadian Extractive Sector

<table>
<thead>
<tr>
<th>Origin of RBC Tool</th>
<th>Number of Tools</th>
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<td>37</td>
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<tr>
<td>2. Industry</td>
<td>23</td>
</tr>
<tr>
<td>3. Canadian Government (Federal)</td>
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<td>4. Indigenous Government</td>
<td>12</td>
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<tr>
<td>5. Provincial Governments</td>
<td>8</td>
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<tr>
<td>6. Non-Governmental Organizations (Domestic)</td>
<td>3</td>
</tr>
<tr>
<td>7. Multi-stakeholder Initiatives</td>
<td>3</td>
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</tbody>
</table>

Like the RBC tools by Indigenous nations, industry RBC tools also deal, considerably, with stakeholder participation and engagement. The Prospectors and Developers Association of Canada (PDAC) (7) and

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18 For some of these issues see Robert Gibson et al, “The Key Components and Provisions that need to be Incorporated into Impact Assessment Legislation to Ensure that Assessed Undertakings Help Meet Canadian Climate Change Mitigation Commitments and Duties” (2018) The Paris to Projects Research Initiative Discussion Paper.
the Mining Association of Canada (MAC) (10) are the leading industry organizations which have developed RBC tools. Consistent with its more extensive remit,\textsuperscript{19} the MAC boasts of a broad array of RBC tools, with the Towards Sustainable Mining (TSM) Guiding Principles as its flagship.\textsuperscript{20} The TSM Guiding Principles are operationalized through 9 protocols and frameworks. Exceptionally, the TSM has a protocol on energy and greenhouse gas (GHG) emissions management, making it one of the two identified RBC guidance tools that directly addresses climate change (with the second being the GRI Standard on emissions reporting; it has therefore been classified as a reporting tool in table 2). Although pre-dating the 2019 Canadian IAA, the protocol on energy and GHG management could be instructive in the design of guidelines for the implementation of the IAA’s provisions on the consideration of climate change in project assessment. Also, worth highlighting is PDAC’s recent Guide on Gender Diversity and Inclusion as part of its framework for responsible exploration (e3 plus). Again, the Guide is potentially useful for the consideration of “the intersection of sex and gender” as a factor when assessing projects under the IAA.

International organizations, including State and non-State based institutions, are the most prolific sources of RBC Guidance tools. While most tools are general, some of them focus on specific subjects including information standards, Indigenous people and meaningful stakeholder engagement, supply chain management, security and gender. The UN Guiding Principles on Business and Human Rights (UNGPs) is arguably the most prominent RBC tool given broad acceptance and adoption by countries and businesses worldwide, including Canada and Canadian businesses. Importantly, the UNGPs emphasize the duties of States and responsibilities of businesses to, respectively, mandate and conduct human rights due diligence (HRDD) to address businesses’ impacts on human rights.\textsuperscript{21} Providing more detailed guidance on due diligence are the OECD’s Due Diligence Guidance for Responsible Business Conduct (2018), Due Diligence Guidance on Meaningful Stakeholder Engagement in the Extractive Sector (2017) and Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas (2016). Canada’s extractive companies have responsibilities under these guidance tools given Canada’s membership of the OECD and its adherence to the OECD Guidelines for Multinational Enterprises.\textsuperscript{22} Among the identified international institutions, the World Bank appears to have paid the most attention to gender issues.\textsuperscript{23}

On Indigenous engagement, the UN General Assembly’s UN Declaration on the Rights of Indigenous People (UNDRIP) is frequently referenced. In 2013, the UN Global Compact developed specific guidance for the private sector in its Business Reference Guide to the UNDRIP, with the purpose of helping businesses to “understand, respect, and support the rights of Indigenous peoples by illustrating

\begin{itemize}
    \item \textsuperscript{20} MAC, “TSM Guiding Principles” <https://mining.ca/towards-sustainable-mining/tsm-guiding-principles/>.
    \item \textsuperscript{21} UN Guiding Principles on Business and Human Rights, paras. 4, 15 & 17.
\end{itemize}
how these rights are relevant to business activities”. The International Council on Mining and Metals’ Indigenous Peoples and Mining Good Practice Guide is another frequently referenced source. The World Bank and the IFC require consultation with Indigenous peoples where Indigenous peoples or communities stand to be affected. Specifically, the World Bank’s Environmental and Social Framework requires consultation on a standard of free, prior, and informed consent (FPIC) where Indigenous peoples in historically underserved traditional local communities are affected. Further on FPIC, particularly in the contexts of sacred sites and cultural rights, Butzier and Stevenson note that the International Bar Association’s Model Mining Development Agreement (MMDA) requires a social impact assessment and action plan to address the impacts of mining on affected communities. The MMDA also requires that the affected community and extractive company develop a Community Development Agreement, which among other things, require companies to submit to local jurisdiction for dispute resolution.

Other guidance tools on engagement and consultation have been developed by Indigenous governments and/or affiliated bodies. Specific consultation guidelines or policy documents may be provided, usually available on Indigenous government websites. Where multiple Indigenous communities are involved, more extensive and coordinated guidance are designed and promoted. Indigenous RBC tools identified elsewhere are in some cases included within an Indigenous community’s broader framework of environmental management, stewardship, and/or protection plans, policies, and strategies; either self-governed, or, in some cases, developed in co-operation with Canadian governments (provincial and/or federal). Other RBC guidance from Indigenous governments may be found within Indigenous peoples’ written Constitutions and other Indigenous laws, as well as unwritten traditions. Given the uniqueness of Indigenous communities, preference should be given to tools promoted by local communities over more general instruments or pan-Indigenous tools, particularly in respect of obtaining communities’ FPIC.

RBC Instruments designed and promoted by the Canadian government draw, largely, from international RBC tools. Most of the instruments are promoted to extractive companies operating outside Canada by government agencies with global focus. Global Affairs Canada (GAC) and Export Development Canada are the authorizing agencies of nine of the thirteen identified federal RBC tools. Specifically, the GAC

28 Ibid.
29 For example, the Yukon First Nations Engagement and Consultation Tool Website provided by the Yukon Chamber of Mines. See Yukon Chamber of Mines, “Yukon First Nations Engagement and Consultation Tool,” Online: <https://www.yukonminers.org/index.php/all-news/41-yukon-first-nations-engagement-and-consultation-guidebook-is-live-online> [https://perma.cc/WLT3-NH69].
has released the Guidelines on supporting Human Rights Defenders. On gender, the GAC has also promoted Canada’s Feminist International Assistance Policy (2017) and the Policy on Gender Equality (2017). Three of the four identified federal RBC tools promoted within Canada focus on participation of and relationship with Indigenous peoples. Particularly, the Canadian government in conjunction with the PDAC and the Canadian Aboriginal Minerals Association developed the Mining Information Kit for exploration in Aboriginal communities. Provincial RBC tools are also participation centric, as six out of eight identified tools deal with consultation and participation of Indigenous people. Similarly, Canadian NGOs have mostly proposed tools for the effective integration of Indigenous peoples into decision making processes (the three identified NGO tools focus on Indigenous relations).

Table 2 – RBC Tools, Focus Areas and Promoters

<table>
<thead>
<tr>
<th>Key Focus Areas</th>
<th>Number of Tools</th>
<th>Major Promoters</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>37</td>
<td>International org. (18), Indigenous Govt. (6), Fed. Govt. (6), Industry (5),</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Prov. Govt. (2)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>International org. (3), Multi-stakeholder Initiatives (2)</td>
</tr>
<tr>
<td>Gender</td>
<td>7</td>
<td>International org. (4), Fed. Govt. (2), Industry (1)</td>
</tr>
<tr>
<td>Human Rights &amp; Due Diligence</td>
<td>5</td>
<td>International org.</td>
</tr>
<tr>
<td>Mine Decommissioning/Tailings Management</td>
<td>3</td>
<td>Industry (2), Multi-stakeholder Initiatives</td>
</tr>
<tr>
<td>Human Rights Defenders</td>
<td>3</td>
<td>International org (2), Fed. Govt.</td>
</tr>
<tr>
<td>Child and forced labor</td>
<td>3</td>
<td>International org (2), Industry</td>
</tr>
<tr>
<td>Resource Revenue Sharing</td>
<td>2</td>
<td>Industry, Indigenous Govt.</td>
</tr>
<tr>
<td>Reporting/Access to information</td>
<td>2</td>
<td>International org.</td>
</tr>
<tr>
<td>Dispute/Crisis Resolution</td>
<td>2</td>
<td>Industry, Fed. Govt.</td>
</tr>
<tr>
<td>GHG Emissions</td>
<td>1</td>
<td>Industry</td>
</tr>
<tr>
<td>Water stewardship</td>
<td>1</td>
<td>Industry</td>
</tr>
</tbody>
</table>

While Table 2 does not include all RBC tools relevant to the Canadian extractive sector, some tentative conclusions can be drawn as to the current landscape of promoted RBC tools. Whereas international organizations have the highest number of RBC tools (many of which are general) promoted by a variety of institutions, industry, although with fewer instruments, has the widest spread in respect of focus areas. Industry-promoted RBC tools are on ten of the thirteen focus areas. Indigenous participation is the only thematic area on which each of the seven categories of institution advanced RBC instruments.

The above analysis of promoted RBC tools stops short of a detailed qualitative appraisal of the content, quality and effectiveness of the tools. The active and robust involvement of industry in designing and promoting tools does not necessarily translate into a positive contribution of industry in the various focus areas. We found no in-depth study of how these industry RBC tools are promoted and their effects so far. Nevertheless, Tables 1 and 2 map thematic areas covered by existing RBC tools in Canada, the major promoters, and could help discern issues which have not been addressed. Again, the analysis here could be helpful in designing a framework for the coherent and efficient administration of RBC tools. In designing such framework, the manual on RBC Guidelines and industry practice aids compiled by
the UN Global Compact (Network Canada) and Canadian CSR Implementation Guide are helpful starting points.\textsuperscript{32}

### 3.2 What is the Relationship Between the Canadian Extractive sector and RBC Due Diligence Guidance Tools and How do they Address Human Rights, Gender, and Stakeholder Engagement?

While only four international RBC instruments provide explicit guidelines on human rights due diligence (HRDD), due diligence is an intrinsic feature of most RBC tools.\textsuperscript{33} We have not included the UNGPs as one of these tools as while it sets out general HRDD principles, due diligence is not its sole focus. Our focus here is to lay out the trends identified in the literature on policies and practices within the Canadian extractive sector on the consideration of human rights, gender, Indigenous and stakeholder engagement in due diligence processes. Cumulatively, there are forty-two instruments on these thematic areas in Table 2. As also shown in Table 2, the four identified HRDD instruments are solely promoted by international organizations (the OECD (3) and ICMM (1)). We have not identified any tool designed or promoted by the Canadian government (and Provincial governments) explicitly on HRDD. In her analysis of the 2014 Canadian CSR Strategy, Simons assesses the 2014 Strategy against the requirements UNGPs of which HRDD is a central aspect. She points out that the CSR Strategy fails to require or compel extractive companies to undertake HRDD.\textsuperscript{34} This, however, is not to be read as meaning that there is no expectation for Canadian extractive companies to comply with due diligence requirement. As Simons further notes, the 2014 CSR Strategy encourages Canadian companies to align their practices to intergovernmental initiatives including the UNGPs and the various OECD Due Diligence Guidance RBCs.\textsuperscript{35} The GAC notes elsewhere that “companies should be prepared with appropriate due diligence in assessing and mitigating risks”, particularly, in instances where “local laws are not aligned with Canadian values”.\textsuperscript{36} This appears to be the closest the Canadian government has come to ‘requiring’ Canadian extractive companies to undertake HRDD, albeit in the context of transnational extractive activity and where laws of host countries are not in in line with “Canadian values”.

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\textsuperscript{35} \textit{Ibid}, 180.

The absence of an express requirement that extractive companies conduct HRDD within or outside Canada notwithstanding, the argument has been made that companies are still required to conduct such due diligence both under the UNGPs and the OECD Guidance.\(^37\) Away from the more State-centric instruments like the UNGPs and OECD due diligence tools, the IFC Performance Standards and the ICMM have been referenced as more specific tools to encourage companies to conduct due diligence.\(^38\) IFC Performance Standard (PS) 1 suggests that businesses respect human rights, recognizing that due diligence prescribed by the Performance Standards will “enable the client to address many relevant human rights issues in its projects”.\(^39\) More concretely, to be eligible for IFC support, the client is required to develop an environmental and social management system to manage social risks and impacts throughout the lifecycle of the project.\(^40\) Members of the ICMM (e.g. Barrick Gold and Teck) are also covered by the ICMM’s “Human Rights in the Mining and Metals Industry: Integrating Human Rights Due Diligence into Corporate Risk Management Processes”.\(^41\) The restriction of their use to companies which are either in need of financial support (e.g. IFC) or are members of an international organization (e.g. ICMM) is an obvious disadvantage of these institutional instruments compared to more broadly disseminated tools like the OECD due diligence tools. Again, non-compliance with the OECD due diligence tools could lead to a company being subject to a Specific Instance complaint at the Canadian OECD National Contact Point (NCP).\(^42\)

McKnight’s research on HRDD provides a comprehensive review of the subject in Canada.\(^43\) Like other RBC literature, McKnight highlights issues including responsibility and liability, direct liability, the centrality of stakeholder participation, the connection between HRDD and the Social License to Operate, and supply chain due diligence. As the UNGP and OECD due diligence guidance make clear, the responsibility of companies to respect human rights should not be equated with the primary obligation of States to protect human rights and regulate liability domestically.\(^44\) The decision of the Ontario Superior Court in Choc v. Hudbay Minerals is an often-referenced authority on the exercise of jurisdiction by a home State court to prima facie impose direct liability on a parent corporation for acts that caused harm in another country.\(^45\) This type of litigation arguably brings to the fore the disadvantage


\(^{39}\) IFC, “Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts” (1 January 2012) 3.

\(^{40}\) Ibid, para. 5.


\(^{42}\) The complaint process has, however, been critiqued as ineffectual given the non-consideration of the substance of claims, inadequately resourced, untransparent, inaccessible, and undermined by the non-cooperation of Canadian companies. See Seck, \(\text{supra}\) note 37 at 80 – 82. See also Penelope Simons, “The Governance Gap: Multistakeholder and Intergovernmental Initiatives” in Penelope Simons and Audrey Macklin, The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage (London: Routledge, 2014) 106 – 113.


\(^{45}\) Choc v. Hudbay Minerals 2013 ONSC 1414. See McKnight, “Human Rights Due Diligence: International Instruments”, \(\text{supra}\) note 43 at 12; McKnight, “Human Rights Due Diligence: Recommendations for a Canadian Approach”, \(\text{supra}\) note 43
of failing to conduct effective HRDD and consequently failing to respect the human rights of host communities.

The failure of extractive companies to comply with international RBC due diligence soft laws can have significant consequences for their bottom line,\textsuperscript{46} goodwill, and SLO. Particularly, the loss of SLO is a recurrent theme in Canadian scholarship.\textsuperscript{47} However, despite the apparent connection between human rights concerns and the absence of social licence, literature on social licence rarely reference human rights or HRDD. Equally, social licence is rarely mentioned in human rights due diligence instruments. Of the four identified direct HRDD instruments, the OECD Guidance on Meaningful Stakeholder Engagement is the only tool that made (tangential) reference to social license.\textsuperscript{48}

The literature consistently demonstrates that early and ongoing meaningful stakeholder and rights-holder engagement is central to RBC and human rights due diligence.\textsuperscript{49} As noted in in the OECD Due Diligence Guidance on RBC, “due diligence is informed by engagement with stakeholders”.\textsuperscript{50} McKnight notes that stakeholder engagement is “predicted throughout the (due diligence) process”.\textsuperscript{51} On the whole, Canadian extractive companies have been scored low in respect of their engagement in meaningful stakeholder engagement. For example, Haslam et al, note that Canada’s regulatory environment focuses on responsibilities to shareholders rather than stakeholders.\textsuperscript{52} They further describe Canada’s stakeholder engagement orientation as being within the “Anglo-American tradition of “explicit” stakeholder relations”.\textsuperscript{53} Explicit stakeholder relations refer to voluntary corporate CSR strategies and the exercise

\footnotesize{at 5; Simons, \textit{supra} note 34 at 203; Seck, \textit{supra} note 38 at 232. Direct liability connotes that the parent company has de facto control over the operations of a subsidiary or was closely involved in the operations of the subsidiary which caused harm. This, consequentially, imposes a duty of care on the parent company. See further Caal Caal v. Hudbay Minerals Inc., 2020 ONSC 415.}


\footnotesize{47 The Guidance notes that it is prudent to engage with stakeholders as such engagement can contribute to “attaining and retaining a “social licence to operate” facilitating current and potential future operations and expansions”. OECD, \textit{supra} note 33 at 14. Ruggie also made a tangential reference to ‘social licence’ in his 2008 report to the UN Human Rights Council. See John Ruggie, “Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development” (2008) A/HRC/8/5, 17.}


\footnotesize{50 OECD, \textit{supra} note 33 at 18.}

\footnotesize{51 McKnight, “Human Rights Due Diligence: Recommendations for a Canadian Approach”, \textit{supra} note 43 at 2.}

\footnotesize{52 Haslam et al, \textit{supra} note 7 at 526.}

\footnotesize{53 \textit{Ibid.}}
of corporate discretion in companies’ engagement with the public. Such discretionary approach, however, is problematic and this appears to be a global problem. Citing a 2015 report of the IFC’s Office of the Compliance Advisor Ombudsman (CAO), See k notes that 62% of the 150 cases brought from 46 countries pertained to stakeholder engagement, and 43% of all cases concerned extractive industries domiciled and/or operating in different parts of the world. On a more positive note, UNICEF gave the example of a “broad-based community outreach initiative, targeting the general population, including children” by Canadian extractive Sherritt in its work on engaging stakeholders on children’s rights, with respect to its Ambatovy nickel mine in Madagascar.

Paré and Chong identify the UNICEF Children’s Rights and Business Principles as the most comprehensive soft law instrument protecting children in the business and human rights sphere. Other RBC tools like the UNGPs, OECD Guidelines, and UN Global Compact either touch on the subject tangentially or restrict same to the child labour context. In their review of four Canadian mining companies’ (Agrium, Randgold Resources, Goldcorp and Barrick Gold) internal codes of conduct, Paré and Chong find that, similar to the RBC tools, companies (with the exception of Barrick Gold’s more extensive code of conduct) have tended to focus on child labour as opposed to other children’s rights. Specifically, children’s rights are mostly considered in the context of supply chains. Hence, the OECD published a set of guidelines on how to identify and address worst forms of child labour in mineral supply chains. Additionally, the issue of child labour is the centrepiece of the proposed Modern Slavery legislation on reporting, Bill C-423, and the supply chain consultations undertaken by the Canadian government. The need for a mandatory domestic reporting regime on responsible business conduct, which Canada currently lacks, is the central recommendation in the identified literature.

54 This is different from implicit CSR engagement which refers to “corporations’ role within the wider formal and informal institutions for society’s interests and concerns”. See Dirk Matten & Jeremy Moon, “‘Implicit’ and ‘Explicit’ CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility” (2008) 33:2 Academy of Management Review 404 at 409 – 410.
55 See, supra note 37 at 76
58 There are, however, other children-specific instruments like the ILO Minimum Age Convention (No. 138), Worst Forms of Child Labour Convention (No. 182) and the most comprehensive instrument on children the Convention on the Rights of the Child.
59 Paré and Chong, supra note 57 at 913.
A major distinction between how stakeholder engagement is treated in the human rights context vis-à-vis other contexts, is the recognition of rights holders as a specific genre of stakeholders under HRDD. Indeed, while the UNGPs made reference to rights holders (apart from stakeholders), it is the OECD Guidance for Meaningful Engagement in the Extractive Sector that has done the more robust work of clearly distinguishing between stakeholders and rights-holders, carefully laying out the relevance of this distinction.\footnote{OECD, \textit{supra} note 33 at 19 – 20.} Literature on stakeholder engagement in the Canadian context has, however, been largely silent about this important distinction.\footnote{Seck, however, commented on this distinction in her work. See Seck, \textit{supra} note 37 at 90 – 91. See also McKnight, \textit{“Human Rights Due Diligence: International Instruments”}, \textit{supra} note 43 at 24.} Failure to recognize this distinction considerably impacts how consultation processes are carried out. In their Guidelines for Responsible Mining in British Columbia, for example, Berchtold et al while commenting relatively extensively on the need for meaningful stakeholder engagement,\footnote{Berchtold et al, \textit{supra} note 49 at 9 – 10. They, however, note that “Additionally, mine operators should respect internationally recognized rights of Indigenous peoples by obtaining FPIC from First Nations and other Indigenous Peoples wherever mine-related activities could affect their rights or intersects”.} did not examine in any depth the need to consider the existence of rights in understanding the concept of stakeholders and determine appropriate engagement. Similarly, in their analysis of “… 4,623 stakeholders from 19 gold-mining companies operating 26 mines in 20 countries” and in drawing conclusions on stakeholder engagements depending on the institutional environment of host States, Nartey et al only considered two categories of stakeholders which they described as high-status and low-status stakeholders.\footnote{Lité Nartey et al, \textit{“Status Climbing v. Bridging: Multinational Stakeholder Engagement Strategies”} (2018) 3:2 Strategy Science 367 – 392.} While emphasizing the centrality of “the rule of law”, the authors did not consider the relevance of ‘rights’ as a key variable.\footnote{Nartey et al argue that “… where the rule of law is weak, the strategy of status climbing appears favourable as compared to bridging … The impact of accessing information for enhancing cooperation and reducing conflict with stakeholders is only evident in countries with strong rule of law, where we also observe a moderating role of firm and stakeholder centrality”. The authors supported this position, in part, by referring to Canada’s Rosia Montana Gold Corporation’s failed attempt to build a gold mine in Romania, \textit{Ibid} at 385, 371.}\footnote{Newenham-Kahindi, \textit{supra} note 49 at 398 – 399.} One explanation for the limited focus on rights-holders could be the fact that the OECD Due Diligence Guidance on Meaningful Stakeholder Engagement which deals extensively with the subject is a relatively recent document and further that most Canadian RBC tools fail to consider rights-holders.

Despite the paucity of stakeholder engagement literature dealing directly with the concerns of rights-holders, the literature does engage with a broad range of other important issues. Newenham-Kahindi explore how multinational companies (in this case a Canadian gold mining company operating in Tanzania) use their employees as “internal stakeholders” to engage with external stakeholders (local communities).\footnote{Eaton, \textit{supra} note 49, 12 – 17.} Using Rio Tinto Alcan’s operation in Ghana as case study, Eaton demonstrates how a multi-stakeholder approach (company, NGO, governmental development agency, and municipal government) to stakeholder engagement can be successfully implemented.\footnote{Eaton, \textit{supra} note 49 – 50.} Wanvik shows that resource management in Canada has evolved, with government giving way to the emergence of “governance as corporate stakeholder management”.\footnote{Tarke Wanvik, \textit{“Governance Transformed into Corporate Social Responsibility (CSR): New Governance Innovations in the Canadian Oil Sands”} (2016) 3 The Extractive Industries and Society 517 – 526.} In lieu of the more dominant bipartite approach to engagement, Wanvik proposes a tripartite arrangement involving the community, municipality responsible for local service delivery, and the company to address, among other things, power imbalance.\footnote{\textit{Ibid} at 524.} The relationship...
between corporate social responsibility and social license to operate (SLO) was considered by Tuulentie et al. They highlight the fluidity of the SLO concept, the importance of defining ‘local community’ clearly, and the need for national or administrative guidelines for company-community agreements. What is clear is that, apart from the literature that considers resource extraction and Indigenous peoples, a considerable amount of Canadian research on stakeholder engagement is focused on operations of Canadian companies outside Canada.

Within Canada, most of the literature on stakeholder engagement focuses on engagement with Indigenous peoples. Indigenous engagement is, however, unique given the constitutionally enshrined inherent Aboriginal and Treaty rights of Indigenous people and the judicially affirmed mandatory requirement to consult and accommodate. However, the argument has been made that the constitutionally enshrined and judicially affirmed notion of consultation is narrow, hence, necessitating the application of international RBC instruments, which as Damstra points out, have not been applied by the Canadian government to Canadian extractive companies within Canada. The United Nations Declaration on the Rights of Indigenous People (UNDRIP) is the most referenced international instrument in the identified literature on Indigenous engagement. In the extractive sector context, literature on Indigenous engagement frequently references the concept of free, prior, and informed consent, which is one of the UNDRIP’s key provisions. Other RBCs considered relevant for Indigenous engagement include the UNGPs and OECD Guidelines for Multinational Enterprises (MNEs). In addition to these tools, Seck considers the provisions and implications of IFC Performance Standards, the OECD Stakeholder Engagement Guidance, and the reports and decisions of the IFC’s Compliance Advisor Ombudsman (CAO) and OECD National Contact Point (NCP).

Referencing the Stakeholder Engagement Guidance, Seck notes that if a company concludes through its due diligence processes that a project requires consent and such consent has not been given, “activities should not proceed unless FPIC is subsequently forthcoming”. This position goes beyond the more formally recognized government endorsed duty to consult in Canada, suggesting the need to mainstream

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71 Tuulentie et al, supra note 49 at 106.
75 Damstra, supra note 72 at 154 – 155.
76 See UNDRIP, Art. 35(2); Penelope Simons & Lynda Collins, “Participatory Rights in the Ontario Mining Sector: An International Human Rights Perspective” (2010) 6:2 Journal of Sust Dev Law and Practice 178 – 216; Seck, supra note 37 at 67; Damstra, Ibid at 161 – 162; Boyd & Lorefice, supra note 69 at 5; Mitchell, supra note 73; Weitzner, supra note 73 at 89.
77 Seck, supra note 37, 71 – 94.
78 Ibid at 94. See also OECD Due Diligence Guidance for Meaningful Engagement, supra note 33 at 98.
RBC tools for Indigenous engagement. However, in its 2018 Principles Respecting Canada’s Relationship with Indigenous Peoples, the government of Canada recognizes that meaningful engagement with Indigenous peoples entails aiming to secure FPIC whenever the government proposes to take actions which have an impact on Indigenous rights. The government describes the commitment as going beyond the legal duty to consult, although this falls short of an explicit requirement for Indigenous consent and still allows for infringement when justified. Elsewhere, Simons and Collins highlight the obligation of the Canadian government to align its laws with the decision of the Inter-American Commission on Human Rights in the case of Maya Indigenous Communities of the Toledo District (Belize), which, in interpreting articles XVIII and XXIII of the American Declaration of the Rights and Duties of Man, recognized the obligation to obtain the free prior and informed consent of Indigenous people before the “granting of concessions to exploit the natural resources of Indigenous territories”.

Stakeholder engagement, however, does not mean the same thing to Indigenous people, industry, or government. Boyd and Lorefice, through an analysis of 75 publicly available documents on consultation, identified some of these differences to include different perceptions of what consent means (consent means consensus to Indigenous people, but veto to industry and government), motives for consulting (autonomy/sovereignty for Indigenous people, adherence to the law for government, and economic benefits for businesses), and reasons for desiring early engagement (increased involvement in decision making for Indigenous people, meeting timelines for government, and cost effectiveness for industry). They argue that understanding these differences are first steps to dealing with conflict over consultation. The use of developmental gaps in Indigenous communities and the promise to ‘address’ those gaps as leverage by extractive companies during consultation has been highlighted as contrary to the notion of ‘free consent’.

In what she describes as ‘extractive imperialism’, Mitchell notes that extractive companies engage in ways steeped in (subtle) coercion and inconsistent with Indigenous cultural frameworks and worldviews. She argues that a rights-based resource development model is the “essential pathway to reconciliation and sustainable development for Canada”. Weitzner draws out lessons for Indigenous engagement from the MAC-initiated Whitehorse Mining Initiative (WMI). She highlights flaws including lack of grassroots Indigenous involvement, limited human and financial resources, the absence

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80 Ibid.
81 Ibid at principle 7.
82 Maya Indigenous Communities of the Toledo District (Belize) (2004), Inter-Am CHR No 40/04, para. 142.
83 Simons & Collins, supra note 76 at 195.
84 Boyd & Lorefice, supra note 73 at 3. See also Brendan Boyd & Sophie Lorefice, “Understanding Consultation and Engagement of Indigenous Peoples in Resource Development: A Policy Framing Approach” (2018) 61:4 Canadian Public Administration 572 – 595 (Policy Framing Approach). Imai also drew the distinction between consent and veto emphasizing that whereas veto is absolute, consent is not. He further proposed a consent standard based on three building blocks – continuing Indigenous interest in traditional lands despite the “surrender clause”, need to identify land needed for a meaningful right to harvest, and the requirement for Indigenous consent for “further taking up of lands”. See Imai, supra note 73 at 386 – 389, 395 - 406.
86 Mitchell, supra note 73 at 1 – 11.
87 Ibid, 10 – 11.
88 Ibid, 11.
of Indigenous led multipartite dialogues, and the exclusion of Indigenous women. In reviewing subsequent multipartite initiatives including the National Orphaned/Abandoned Mines Initiative (NOAMI), Mining Sector Sustainability Table, MAC’s Community of Interest and the TSM, Weitzner argues that systemic flaws have been replicated and that “there is very little evidence to suggest that institutional learning has taken place or progress has been made in Indigenous participation”. Fitzpatrick et al, however, seem to conclude differently as they argue that the lessons learnt from the WMI have informed the TSM’s more systematic approach to stakeholder participation during implementation, as well as the premium the TSM places on monitoring, verification, and reporting.

Weitzner’s reference to the non-involvement of Indigenous women in 2010 has been reiterated in recent years by scholars who argue that both international and Canadian CSR laws and policies are largely ‘gender blind’. There is, however, a growth in the literature on gendered dimensions of the extractive sector, with most of the identified literature published between 2017 and 2019. The 2017 Due Diligence Guidance for Meaningful Engagement, which has a dedicated annex (annex C) on ‘Engaging with Women’, was in 2019 the frontline international RBC tool to address the gendered implications of extraction. In the Canadian context, Simons and Seck highlight Canada’s Feminist International Assistance Policy (FIAP) as an “important step forward”. They note, however, that the FIAP does not address the effect of resource extraction on the rights of women and girls, or socio-environmental and human rights implications of the Canadian extractive sector in host states. Morales, also highlights these shortcomings in the FIAP. Further, referencing the report of the 2014 KAIROS symposium, she points to the distinct and immense vulnerability of Indigenous women to the social, health and environmental impacts of extractive projects, the connection between such projects and violence against women, limited benefits to women, and women’s exclusion from official consultation and IA processes. Morales argues that the most effective way to protect Indigenous women and girls from the adverse effects of extractive projects through the human rights framework, is to provide a space for Indigenous women to participate in consultation and decision-making processes, include them in negotiations concerning benefit sharing, and provide opportunities for them to “bring forward their own understandings of the laws that govern them”.

89 Weitzner, supra note 73 at 94 – 95.
90 Ibid at 94.
94 Seck, supra note 92 at 289.
96 Ibid at 3.
98 Ibid at 61 – 62, 86 – 89. The involvement of women in the Voisey’s Bay project by the Voisey’s Bay Nickel Company (VBNC) (owned by INCO Ltd.) was highlighted by Morales. She notes that the Tongaminut Inuit Annait (TIA) which represents women in Northern Labrador lobbied the Labrador Inuit Association on the need of including gender equality provisions in mining agreements. While initially rejected by INCO, the provision eventually made it into the agreement.
Using the example of violence against women in the context resource extraction, Simons and Handl, engage in a feminist critique of the UNGPs and show how this important RBC tool fails to address women’s experiences or to protect women’s rights. Among other things, they point to the UNGPs’ the treatment of women as monolithic, one-dimensional victims, and of sexual violence as something that happens only in exceptional circumstances such as armed conflict, rather than it being treated as a pervasive issue across all business sectors. The argument against considering women solely as agentless ‘victims’ and understanding the diverse contexts in which women engage with, or are affected by the extractive sector is one of the key emerging trends in RBC scholarship. Gendered analyses of the extractive sector are considerably more theoretical than applied, with a seeming preference for feminist-based analysis.

Only a few of the identified articles and reports considered case studies in their analysis. The human rights analytical framework has also been used (to varying extents) in all the identified literature, apart from one article. Similar to the Indigenous relations centricity of stakeholder engagement discourse in the Canadian context, Canadian literature on gender and the extractive sector is also mostly focused on Indigenous women. While this focus is justified given that extractive projects in Canada are overwhelmingly undertaken on Indigenous lands, mining projects also have implications for non-Indigenous people. We found no literature in the Canadian context which has considered the distinct implications of mining projects for non-Indigenous women.

In all, while there are considerable international RBC due diligence tools with guidance on stakeholder engagement, gender, and human rights, there is no domestic policy or law in Canada mandating human rights due diligence by companies. Few RBC scholars have made a case for such law or policy. McKnight, for example, referenced seven jurisdictions with actual or prospective mandatory human rights due diligence and/or reporting laws. However, the lack of laws on human rights due diligence in Canada strengthens the case for an alignment of due diligence and IA. Thereby, due diligence could

99 Simons and Handl, supra note 93 at 128.
100 Ibid at 130.
101 Ibid at 122 – 128.
104 See Morales, supra note 97.
105 O’Shaughnessy made no reference to human rights. See O’Shaughnessy, supra note 103.
108 But see Simons & Handl, supra note 93 where they discuss the intersectional impacts of violence against women in the context of resource extraction, at 121 - 122.
109 France, Switzerland, United Kingdom, California, Australia, Netherlands and Germany. See McKnight, supra note 33 at 5.
benefit from the statutory and peremptory nature of IA. It is worth noting that the language of human rights due diligence is less common in the literature compared to the language of IA. This is, more so, in the literature on stakeholder engagement and gender. We turn more specifically to the question of the intersection between due diligence and IA in the next section.

3.3 What is the Intersection between Responsible Business Conduct Guidance Tools, Due Diligence, and Impact Assessment, and what are the implications for stakeholder engagement?

Different modes of IA are referenced in RBC literature focused on the Canadian extractive sector. While Human Rights Impact Assessment (HRIA) is most commonly discussed, Social Impact Assessment (SIA) and Gender Impact Assessment (GIA) are also referenced. None of the identified sources spoke expressly to the distinction between IA and due diligence, as RBC scholars tend to approach the relationship between both concepts differently. RBC literature either refers to IA as a “component” of due diligence or as a “tool” of due diligence. For example, in proposing a Canadian approach to HRDD, McKnight argues that “human rights impact assessments should be seen as integral ... in a deeper process that is ongoing, iterative, proactive and reactive”.110 The UNGPs and OECD RBC Due Diligence Guidance also seem to represent IA as a “component” of the HRDD process.111 Salcito and Wielga, however, have suggested that the definition of due diligence in the UNGPs parallels that of HRIA, and that one reason for not using the term HRIA in the UNGPs was because of the absence at the time of an accepted HRIA methodology.112

Other scholars have described HRIA as “a means by which business may meet their social obligation to perform their human rights due diligence”113 or as a preventative tool which “offers a mechanism for undertaking human rights due diligence as urged by the UN Guiding Principles on Business and Human Rights”.114 Coumans has also suggested that the “evolving expectations on corporations to be able to demonstrate due diligence led to the development of human rights impact assessment”.115 These representations have different implications. To describe impact assessment (e.g. HRIA) as a component of HRDD suggests that HRDD is broader than HRIA. It, therefore, becomes important to identify other dimensions of HRDD that do not fall within HRIA’s remit. On the other hand, representing HRIA as a ‘means’ or ‘tool’, implies that HRDD is an end to be met rather than a process to be followed. HRIA, therefore, becomes the process through which HRDD is fulfilled. In any case, what is clear from the literature is that IA, particularly, HRIA, is an essential part of the HRDD process, and by extension, the responsible business conduct of extractive companies.

110 McKnight, supra note 43 at 2. Similarly, Simons argue that due diligence under the Guiding Principles should include human rights impact assessment (HRIA). See Simons, supra note 34 at 183.
111 See UNGP, principle 19; OECD Due Diligence Guidance on Responsible Business Conduct, para. 2.2.
According to Coumans, the idea of using HRIA as a mechanism through which Canadian extractive companies meet “corporate social responsibility and human rights standards” was proposed as far back as 2005 by the Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT).116 While this recommendation was not implemented and there is no requirement under Canadian law for Canadian companies to carry out HRIA, companies have done so either under host State laws, or pursuant to the requirements of the IFC Performance Standards when seeking funding from the IFC or an export credit agency, or in a bid to obtain a social license to operate (SLO). The conduct and effectiveness or otherwise of these HRIAs have been considered in the literature. Maher compares Barrick Gold’s ‘collaborative’ due diligence (used interchangeably with HRIA) process in respect of its Pascua Lama Project in the Huasco Valley in Chile, to the separate community led HRIA conducted for the same project.117 The ‘collaborative process’ was mired in controversy due to the alleged manipulation and coercion, and the company never addressed any of the findings.118 Maher concludes that the RBC HRIA process has been “captured by the overwhelmingly dominant ideology of managerialism, where control from companies over their human rights impacts is key” and that this process has the “ability to co-opt, silence local resistance and further entrench internal community fissures whilst giving the illusion of democratic structures and processes”.119 Coumans reached a similar conclusion in her consideration of Goldcorp’s Marlin gold mining project in Guatemala. She noted that despite years of opposition to the project, the company with some socially responsible investors (SRIs) commenced an HRIA process in 2008 without involving any representatives from the community.120 Like the Pascua Lama HRIA process, the recommendations from the Marlin gold process were not implemented. Coumans concluded that human rights tools should not be used without the prior consent of the affected people and such tools can be used by companies to “delay and avoid necessary action to prevent human rights violations and/or address the harm, and to thwart community agency, resulting in a continuation of human rights abuses”.121 She also notes that there is higher risk when the process is controlled by “corporations whose interests would be affected by the outcome”.122 Within Canada, Wanvik notes that upon completion of EIA processes, the perception of a possible bias in favour of industry development is high among the Indigenous communities.123

From the above examples, it is clear that voluntary HRIA (or broader HRDD) is not a silver bullet for addressing actual or potential abuses by extractive companies. As suggested by Coumans and Maher, RBC guidance tools could in fact be captured by companies and used in a manner that may in the end be harmful. To reduce the likelihood of corporate capture and the self-serving interpretation and application of such tools, Coumans argues that human rights tools should be incorporated into
Simons & Macklin propose the establishment of an independent expert-led Corporate Social Responsibility (CSR) Agency, as part of a comprehensive regulatory framework, which would have the mandate of overseeing and assessing pre-investment HRDDs and monitoring post-investment conduct. They suggest that one option would be to have the HRIA conducted by a team commissioned by the CSR agency in accordance with a format developed in consultation with stakeholders and the company and approved by the agency. If the project were to be designated as high risk, in that its impacts would not be amenable to mitigation, it would be considered ineligible for government support. It is doubtful if this consequence is sufficient to deter a company from proceeding with a project with potential high returns. While briefly alluding to the potential illegitimacy or imperialistic connotation of a home state exercising unilateral jurisdiction, Simons and Macklin do not sufficiently consider this very important objection to an home state’s exercise of IA jurisdiction.

Although recognizing the existence of other “practical tools”, Aizawa et al suggest that companies often implement the “specific methodology of HRDD” through a HRIA process. The recognition that HRIA could either be standalone or conducted alongside more conventional EIA or SIA, raises the question of why the identified Canadian RBC literature, despite referring to HRIA (or ESIA) copiously, in most cases fails to reference IA laws (the former Canadian Environmental Assessment Act or the more recent Impact Assessment Act). While the argument could be made that Canadian IA laws have not explicitly referenced human rights as a factor to consider, it has been referenced in few cases (although tangentially) in IA reports. More commonly, IA reports have highlighted potential impacts of projects on Indigenous rights as a factor to consider in the IA process. The relevance of IA law to Indigenous rights is even more apparent now given its explicit inclusion in the Impact Assessment Act. Although

124 Ibid at 285.
126 Ibid at 321. Macklin, however, recognizes instances where the agency could delegate specific components of the HRIA process to the applicants or their consultants on “mutual consent” where anticipated risks are low. Such assessments will be subject to subsequent verification of the agency.
127 Ibid at 327.
128 It is worth noting that government support has previously been tied to company’s cooperation with voluntary dispute resolution mechanisms like Canada’s NCP Contact Point for the OECD Guidelines for MNEs and the Canadian Ombudsman for Responsible Enterprise. Despite this, companies are known to have refused to cooperate with these mechanisms. See Global Affairs Canada, supra note 9.
131 See for example, the Lower Churchill Project IA report which notes that “Nalcor also stated that it would consider using “name-hire” as an approach to increasing female participation in the work force, and the use of the Human Rights Chapter H-14 article 19.1, which would allow an employer to give an advantage to groups that are traditionally disadvantaged”. Joint Review Panel, Report of the Joint Review Panel: Lower Churchill Hydroelectric Generation Project, 2011 CEAA Reference No. 07-05-26178 at 201, 206.
133 IAA, ss. 16(1)(c), 22(1)(c), 36(2)(d), 63(1)(d). The 2012 CEAA provides that environmental assessment “may take into account community knowledge and aboriginal traditional knowledge” (CEAA, s. 19(3)). Further, effects (health and socio-economic, physical and cultural heritage etc.) of designated projects on aboriginal people are considered as environmental
it has been argued that HRIA is different from ESIA, ESIA can be extended to address human rights issues. In fact, Vanclay in proposing core values and fundamental principles for Social Impact Assessment (SIA) emphasized the consideration of human rights, arguing that SIA seeks to defend and uphold human rights.

Expanding SIA to include HRIA provides an inroad for the application of the new IAA given that the Act now explicitly recognizes the consideration of social effects. Another inroad is through sustainability assessment. In the sustainability criteria proposed for the MacKenzie Gas Project, Gibson suggests the consideration of the effects of projects on “rights and entitlements”. This is relevant, as the IAA now recognizes contribution to sustainability as one of the factors to be considered when assessing a project. The argument is that although the explicit incorporation of human rights in IA law would be more ideal, the current legislative framework (IAA) could be applied. However, while this might apply to mining companies within Canada, there remains the question of how the IA laws apply to Canadian mining companies outside Canada. Apart from Simons and Macklin’s recommendation for the establishment of a CSR Agency, not much has been done on this question. The IAA (and, previously, the CEAA) mandates federal agencies not to carry out a project or provide financial assistance for projects carried out outside Canada unless the federal authority determines the project is not likely to cause adverse environmental effects or that such adverse effects are justified. Indigenous rights are to be considered except where the project is to be wholly undertaken outside of Canada. Community knowledge and public comments are, however, factors to be considered. This provision is consistent with the policy of Global Affairs Canada (GAC) and Export Development Canada (EDC) making support for Canadian companies abroad contingent. A minimal amendment to sections 83 and 84 tying support (not just financial support) to IA and taking into consideration, among other things, Indigenous rights within and outside Canada, would make these provisions more consistent with RBC instruments. Although the EDC is excluded from being considered a ‘federal authority’ under the IAA, other relevant non-excluded agencies of government (e.g. Global Affairs Canada; Trade Commissioner Service) can demand that extractive companies commit to conducting IAs satisfying the basic conditions of meaningful consultation and undertaking mitigation measures in respect of significant adverse effects.

effects that should be taken into consideration under the CEAA (CEAA, s. 5(c)). The IAA, however, mandates that the responsible authority “must” take into account “considerations related to Indigenous cultures raised with respect to the designated project” and “any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body …” (IAA, s. 22(1) (l)(q)).

136 Simons, supra note 34 at 187.
138 IAA, s. 22(1)(a).
140 IAA, s. 22(1)(h).
141 IAA, s. 83(a)(b).
142 IAA, s. 84(1)(2).
143 IAA, s. 84(1)(c)(d).
to be eligible for government support abroad.\textsuperscript{144} There is, however, no indication in the literature or in GAC policy documents, that sections 83 and 84 of the IAA (or its earlier iteration in the CEAA) have been explored or applied in respect of Canadian extractive companies abroad.\textsuperscript{145}

Other themes in the literature include the centrality of the issues of positionality and power to mandate HRIA and by extension HRDD.\textsuperscript{146} These themes surface quite evidently in the gender context. Seck argues that embedding gender-based analysis into environmental IA processes of the extractive industry is precisely the kind of tool needed to support respect for the human rights of women and girls.\textsuperscript{147} Through a gender analysis of three IAs (Voisey’s Bay Mine, Meadowbank Gold Project, and MacKenzie Valley Gas Project), Dalseg et al find that the IA processes failed to account for “the totality of northern livelihoods” (rather focusing more on gender and employment), privileged resource extraction, entrenched gender hierarchies and undermined Indigenous mixed economies.\textsuperscript{148} The inclusion of gender in the 2019 IAA further reinforces the case for integrating IA and RBC, as existing RBC tools could be used to design guidelines and/or regulations on gender. Existing RBC tools can also be incorporated by reference in Regulations or Guidelines to the IAA.\textsuperscript{149} These are ways through which RBC tools, which are generally non-binding, could be given a force of law without directly legislating them into law. There is no shortage of research on gender impact assessment/gender-based analysis.\textsuperscript{150} There is also a steady growth in gender-based analysis plus (GBA+) research on how the IAA’s provision on gender can be operationalized.\textsuperscript{151} Despite GBA+ being described as a “common internationally recognized best practice”,\textsuperscript{152} post-IAA GBA+ literature fail to reference these international practices, some of which are

\begin{footnotesize}
\begin{enumerate}
\item See generally Sara Seck, “Strengthening Environmental Assessment of Canadian Supported Mining Ventures in Developing Countries” (2001) 11 Journal of Env Law and Practice 1 – 62 for an early history of the CEAA regulations on projects outside of Canada regulations.
\item Sans and Hansen, \textit{supra} note 113 at 99 - 131.
\item Seck, “Relational Law and the Reimagining of Tools for Environmental Justice”, \textit{supra} note 106 at 166.
\item The Statutory Instruments Act provides that “the power to make a regulation includes the power to incorporate in it by reference a document – or a part of a document – as it exists on a particular date or as it is amended from time to time”. Such incorporation is allowed if the document contains elements that are incidental to or elaborate on rules, reproduced or translated from a document produced by a person or body other than the regulation-making authority or is a regulation. See Statutory Instruments Act, RSC, e. S-22 (1985) s. 18.1 (1)(2).
\end{enumerate}
\end{footnotesize}
contained in RBC tools.\textsuperscript{153} Similarly, the draft interim guidance on GBA plus appears not to have drawn from any international gender focused RBC tool.\textsuperscript{154} While there is relative experience in GBA (and GBA+) analysis in Canada,\textsuperscript{155} the effective operationalization of the GBA+ provision in the IAA could benefit from existing RBC tools on gender.

As reflected in the RBC scholarship, public participation is a considerably well-developed theme in Canadian IA literature. However, the existing body of literature has not sufficiently considered the meaning of “meaningful participation”.\textsuperscript{156} The substantive provisions on meaningful participation, particularly, in the planning phase of a project, are some of the key new provisions in the IAA.\textsuperscript{157} While proposals have been made on what this meaningful participation could look like and there is an interim framework,\textsuperscript{158} existing RBC tools on meaningful stakeholder engagement (taking into cognizance criticisms of these tools in RBC literature) will be helpful in designing the final framework.\textsuperscript{159} Other tools promoted by international organizations which, according to Mitchell, have taken the lead in ‘regulating’ how to assess social and health impacts,\textsuperscript{160} could also be useful in operationalizing the consideration of health and social factors as now required by the IAA.\textsuperscript{161}

### 3.4 Global Best Practices

Given Australia’s similarity to Canada in terms of its colonial history, Indigenous population and large extractive sector, we primarily consider Australian literature in this section. We, also, draw lessons from European jurisdictions considering their comparatively more developed RBC practices. We lay out the findings under two sub-parts. First, we consider the RBC tools promoted to Australian and European


\textsuperscript{155} In the extractive sector, examples of impact assessment processes where gender was considered explicitly include the Voisey’s Bay Nickel Mine project (1999) and the Red Mountain Gold Mine (2019).


\textsuperscript{157} See IAA, ss. 11, 27, 33(e)(f), 51(1)(d), 99, 181 (4.1). The only substantive provision previously under the CEAA was in respect of the IA substitution provision. CEAA, s. 34(c).


\textsuperscript{159} See OECD, Due Diligence Guidance on Meaningful Stakeholder Engagement, supra note 25; Inter-American Development Bank, “Meaningful Stakeholder Engagement” (2019).


\textsuperscript{161} IAA, s. 22(1)(a).
extractive companies and how they are deployed. In the second part, we consider how the selected jurisdictions apply IA and RBC tools.

### i. RBC Tools in Australia and Europe

Australian and European companies are covered by most of the international RBC tools referenced in part 3.1. The modes of application, however, differ. In all, Australian and European States appear to be more involved in ensuring that their extractive sectors comply with responsible business norms. The summarized findings below support this conclusion.

(a) **Responsible Business Conduct Relevant Reports**

We identified four Australia-specific reports on business and human rights.\(^{162}\) The reports were published between 2016 and 2017 by different bodies including the Australian Human Rights Commission (AHRC), the Australasian Centre for Corporate Responsibility (ACCR), and a law firm (Allens Linklaters) commissioned by the Australian Department of Foreign Affairs and Trade (DFAT). The four reports copiously reference the UNGPs and the OECD RBC tools. The evaluation commissioned by the DFAT is particularly commendable, as it entailed a principle-by-principle analysis of the UNGPs, highlighting current laws and policies in Australia that could satisfy the principles and how Australian companies have performed. In a separate fact sheet by the AHRC for the Australian mining and resource sector, basic Guidance on how Australian companies should operate both within and outside Australia was concisely spelt out.\(^{163}\) Referencing the UNGPs, Australian mining companies were encouraged to embed human rights into their core practice, conduct HRIAs, comply with local laws and relevant RBC tools, implement credible and transparent systems of monitoring and reporting, communicate externally on human rights impacts and performance, and establish accessible and appropriate systems to address grievances.\(^{164}\) Canada’s Enhanced CSR Strategy compares poorly against the Australian Guidance due to its restriction to Canadian companies operating abroad, the vagueness of its provisions and specifically its failure to prescribe HRDD. Further, the Canadian Human Rights Commission has not been involved in the responsible business practices of Canadian businesses. Lessons can be drawn from the important role of the AHRC in the Australian RBC practices.

In 2018, the Dutch government commissioned a review of the RBC polices of the EU, Netherlands, France, Germany, United Kingdom, and Switzerland.\(^{165}\) The study found that all the identified countries actively encourage international responsible business conduct and the main tools promoted are the OECD Guidelines, UNGPs, the UN Global Compact, Global Reporting Initiative, and ISO 26000. It further finds that all countries have well established awareness-raising programs and there are a growing number of domestic hard and soft instruments on due diligence. Germany, for example, plans to legislate HRDD if less than 50% of large companies do not voluntarily adopt and adhere to due diligence obligations by the end of 2020.\(^{166}\) More recently, the European Union published its final report on due diligence.

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\(^{164}\) Ibid.


\(^{166}\) Ibid.
diligence requirements through supply chain in 2020. The over 500-page study finds that the UNGPs are increasingly being introduced or proposed as legal standards in EU member States.

(b) **Responsible Business Conduct Relevant Legislation**

Australia and some European countries have begun to transition from soft RBC instruments to passing laws on RBC. This is mostly done in the supply chain context and both Australia and the United Kingdom have now passed anti-modern slavery laws. The laws only require that companies report on risks of modern slavery in their operations and supply chain rather than obligating companies to exercise due diligence to prevent slavery in supply chains. France has the most rigorous rules to date on due diligence under its Corporate Duty of Vigilance Law, which mandates companies to conduct due diligence in their supply chain and produce a report of the actions they have taken in this regard. Switzerland and the Netherlands are at different stages of introducing mandatory due diligence laws. All EU countries now require large companies (with over 500 employees) to report on non-financial issues. The EU’s new Conflict Minerals Regulation which comes into force on 1 January 2021 is another instrument that Canada could learn from. The Regulation mandates mining, raw material traders, smelters and refiners of tin, titanium, tungsten and gold to carry out due diligence on their supply chain to ensure that minerals are imported from responsible sources only.

(c) **Stakeholder Engagement, Indigenous People, and Social License to Operate**

Considerable work has been done by the Australian government on Indigenous relations, particularly, in the resource sector. The 1993 Native Title Act (NTA) is a key piece of the Australian federal regulatory framework. Fordham and Robinson describe the NTA as affording Indigenous people the rights to say no or negotiate in respect of resource development and receive compensation for impacts. Horowitz et al refer to Indigenous peoples’ ‘right to negotiate’ with government and proponent and approach the National Native Title Tribunal (NNTT) if agreement is not reached within six months. While this regime has been criticized for its failure to provide Indigenous Peoples with a veto power and for the limited power of the NNTT, the power to veto exists in the Northern Territory. South Australia has also enacted the Aboriginal Heritage Act (AHA). The Guidelines to the AHA mandates the integration of aboriginal heritage into project assessment and management system throughout the project lifecycle, encourages the conduct of due diligence to ensure compliance with the AHA, and states that “gender sensitivity may also be a consideration depending on the nature of survey

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169 *Modern Slavery Act 2018* (Austl), 2018/153; *Modern Slavery 2015* (UK). The United States final rule made pursuant to section 1502 of the Dodd Frank Act requires the exercise of due diligence which includes the submission of a report on due diligence measures by persons in respect of conflict minerals necessary for the functionality or production of a product. Unlike the broader scope of similar instruments in other jurisdictions, the final rule focuses on conflict minerals from the Democratic Republic of Congo (DRC) or an adjoining country. See generally, Final Rule, 17 CFR Parts 240 and 249b.
work”. Before a mining operator can undertake mining operations on native land in South Australia, such operations must be authorized by a native title mining agreement, Indigenous land use agreement registered under the NTA, or a determination of the Environment Resources and Development Court. In the light of the above and other initiatives, Indigenous engagement in Australia is said to have improved considerably. Particularly, the interpretation of the provisions of the NTA as permitting Aboriginal communities to choose the practitioners that conduct IA so as to avoid bias in the process, has been internationally applauded. The EU has also funded several research projects and training programs aimed at exploring new models of stakeholder engagement in the mining industry that go beyond traditional industry-community relations.

(d) Gender

In 2019, the Danish Institute of Human Rights (DIHR) published a report on gender responsive due diligence. The report notes that extractive companies have, generally, taken a gender-neutral approach to HRDD. To address this, a gender-responsive approach focusing on community relations, land acquisition and resettlement, security, local content, grievance resolution, and strategic social investment, was proposed. While there are various gender-based RBC tools, the DIHR is one of the most comprehensive State based resources on considering gender in HRDD. It could, therefore, be a very useful reference in developing the framework for operationalizing the GBA+ provision of the Canadian IAA. In 2018, the Australian Government produced a detailed statement on women’s economic security, accepting that the mining industry tends to be particularly discriminatory, and pledging to implement better policies to protect women impacted by or working in mining industries.

ii. IA and RBC Tools in Australia and Europe

Under this sub-heading, we consider replicable practices on the intersection between RBC and IA, gender in impact assessment, and, more generally, the meaningful participation rights-holders and stakeholders.

(a) Responsible Business Conduct, Due Diligence, and Impact Assessment

The link between RBC and IA is considered more extensively in non-Canadian literature. Three of which are particularly relevant.\textsuperscript{182} Kemp and Vanclay argue that IA is integral to any human rights due diligence process and “human rights offers a powerful pathway to renew and rejuvenate the very meaning of impact assessment”.\textsuperscript{183} They identify how IA can be used to meet duties under the UNGPs and the possible challenges including the difficulty of the IA community to comprehensibly communicate human rights impacts to businesses and the challenge of deciding whether human rights should be considered as an issue-specific or integrated subject in IA processes.\textsuperscript{184} Bice also considers how SIAs can be bridged with CSR, which she argues share the foundational values of addressing the social effects of corporate activities on human rights, livelihoods, ethical behavior, community engagement, and the environment.\textsuperscript{185} Bice references how the BHP Billiton-Mitsubishi Alliance, in Queensland, Australia, through its regular socio-economic IAs became aware that the local small to medium businesses lacked the experience and resources to tender successfully against larger mining contractors. This finding assisted it to design and establish the BMA Local Buying Program to meet its local content CSR commitment. She also makes the point that the proliferation of voluntary tools (which encourages cherry-picking by companies) could be addressed through the bridging of CSR and the more mandatory SIA regime.

While affirming that HRIA is the most likely mechanism for fulfilling the due diligence provision of the UNGPs, Harrison warns of the risks of uncritical integration in the light of divergencies in HRIA practice, difficulties in translating human rights obligations into analytical tools, failed attempts in jurisdictions like the United Kingdom and the failures of self-regulatory processes.\textsuperscript{186} To address these risks, he proposes a mechanism for meaningful HRIA which must be credible and should be linked to “harder forms of State-based conditionality”.\textsuperscript{187} Such hard conditionality is, however, not sufficient to ensure a meaningful assessment process, he proposes that if the HRIA is to be “an effective mechanism for the successful institutionalization of human rights due diligence”, it must be transparent and open (HRIAs should be disclosed), entail external participation and verification and involve independent monitoring and review.\textsuperscript{188}

The HRIA Guidance and Toolbox designed by the Danish Institute for Human Rights (DIHR) is the most comprehensive State supported instrument considering the intersection of RBC, due diligence and HRIA.\textsuperscript{189} The toolbox spells out the strengths and weaknesses of integrated and dedicated approaches to HRIA and the key criteria for HRIA.\textsuperscript{190} With the exception of independent monitoring and verification criterion, the toolbox appears to have satisfied Harrison’s criteria. One could, however, argue that the toolbox’s access to remedy criterion which requires that impacted rights-holders have avenues to raise grievances include non-operational level avenues, to some extent, opens the possibility of the


\textsuperscript{183} Ibid at 90, 94.

\textsuperscript{184} Ibid at 90 – 91.

\textsuperscript{185} Bice, supra note 180 at 160.

\textsuperscript{186} Harrison, supra note 180 at 109 – 111.

\textsuperscript{187} Ibid, 111 – 112.

\textsuperscript{188} Ibid, 112 – 115.


\textsuperscript{190} Ibid, 22 – 30.
involvement of an independent arbiter.\textsuperscript{191} While not expressly referencing HRDD or any RBC tool, New South Wales’ SIA Guideline for State significant Mining, Petroleum Production and Extractive Industry Development is an example of regulatory tool mandating the consideration of human rights (property, personal, and Indigenous) in an SIA.\textsuperscript{192} This underpins the point made above that Canada’s IAA’s inclusion of the consideration of social and economic effects in IA gives an opening for the assessment of human rights under an legally enforceable SIA.

(b) Gender in Impact Assessment

Oxfam’s Gender Impact Assessment (GIA) Guide is one of the most comprehensive stand-alone tools for Gender Impact Assessment in the extractive sector.\textsuperscript{193} According to the Guide, GIA is a “vital component” of the due diligence process set out in the UNGPs.\textsuperscript{194} The GIA Framework requires that the GIA process be participatory, focused on the most marginalized, human rights compatible, transparent, and the findings therefrom should inform overall project outcomes.\textsuperscript{195} Importantly, the Framework cautions proponents from viewing women (or men) as a homogenous group, since Indigenous women or women with assets will face different forms of discrimination to non-Indigenous women or women without assets.\textsuperscript{196} Oxfam’s GIA Framework has four steps: baseline information collection, discussion and analysis of baseline information with community members, planning and agreeing to actions to avoid risk and ensure positive impact, and reviewing and undertaking ongoing consultation.\textsuperscript{197} Together the GIA Guide and the DIHR Gender-Responsive Due Diligence Framework could provide the Canadian extractive sector with effective tools to ensure that they pay adequate attention to the gender impacts and dimensions of their operations.

(c) Meaningful Participation

The DIHR HRIA toolbox provides that “ensuring the meaningful participation of those who are affected should be the prerequisite of a process seeking to assess human rights impact”.\textsuperscript{198} Such meaningful participation must include the involvement of all stakeholders, particularly, rights-holders, at all stages of the assessment process.\textsuperscript{199} Rights-holders must be enabled to access information, understand the project, learn about their rights, as well as understand the responsibilities of the duty-bearers to uphold the rights.\textsuperscript{200} The HRIA Toolbox explains in detail how stakeholders should be identified and how various stakeholders (rights-holders, duty bearers and other relevant parties) should be engaged. It further provides guidance on how specific rights-holders including children and young people, women and girls, Indigenous peoples, workers and trade unions, minorities, people with disabilities, elderly people, migrants, refugees and displaced persons, LGBTI individuals and persons living with HIV & Aids and other diseases should be engaged. These various rights-holders are captured by the ‘sex, gender with other identity’ factors under the IAA. Arguably, therefore, s. 22(1)(s) of the IAA transcends a

\textsuperscript{191} Ibid at 29.
\textsuperscript{194} Ibid at 6.
\textsuperscript{195} Ibid at 6 – 7.
\textsuperscript{196} Ibid at 7.
\textsuperscript{197} Ibid at 8 – 20.
\textsuperscript{198} Gotzmann et al, supra note 187 at 90.
\textsuperscript{199} Ibid.
\textsuperscript{200} Ibid.
provision which barely calls for a GIA or a gender-based analysis, the provision would inevitably warrant an HRIA and the toolbox provides an adaptable mechanism to do this. Indeed, it is difficult to imagine how stakeholders can be meaningfully engaged without ample distinction between stakeholders and rights-holders and engaging them accordingly. While such distinction is considered the exclusive preserve of HRIA, it must be deemed a key component of stakeholder engagement whether human rights is explicitly or implicitly considered. It is this sense that the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement distinguishes between both stakeholders and rights-holders and requires that both sets of parties be “appropriately identified and prioritized”. While the OECD Due Diligence Guidance is not flaw-free, it sets a standard for the design of the meaningful public participation framework under the Canadian IAA. Although the current interim IAA participation Framework is a step-forward, it falls far short of the provisions of the both the OECD Due Diligence Guidance and the stakeholder engagement section of the DIHR HRIA toolbox.202

3.5 Research Gaps and Further Research

In this knowledge synthesis project, we set out to identify literature on the promotion of responsible business conduct tools in the Canadian extractive sector and how the tools are considered or applied in the practice of IA. We find that there is a considerable amount of academic and grey literature on RBC and the Canadian extractive sector. However, the RBC literature is mostly focused on the operation of Canadian extractive companies outside Canada. Within Canada, the literature on RBC is mostly focused on resource extraction that has implications for Indigenous peoples. There is need for more research on the application of RBC tools within Canada. This need is even more evident with respect to human rights due diligence by Canadian extractive companies within Canada. We found no literature wholly on human rights due diligence (HRDD) within Canada. Further, we found that there has been a proliferation of RBC tools promoted by international organizations, industry, government and other entities. This ‘crowded toolbox’ could lead to inefficiency, confusion or induce corporate fatigue and cynicism. There is, therefore, need for research on how RBC tools can be organized, promoted and used efficiently and effectively by Canadian extractive companies within and outside Canada.

We found a small amount of non-Canadian scholarly articles and grey literature exploring the link between RBC, due diligence and IA, making evident the importance of such connection. There is, however, a need for further research on how RBC tools intersect with the Canadian Impact Assessment Act. Similar to Harrison’s analysis of challenges leading to the cancellation of UK’s Equality Impact Assessment requirement (as a HRDD mechanism), there is need to consider the likely adverse effects of using Canada’s IA framework to meet the due diligence obligation of companies and how such effects can be addressed. More work could also be done on how RBC tools can aid the operationalization of the Impact Assessment Act or necessary reforms to the current IA regime to make it consistent with RBC tools. Again, there is an efficiency case to be made for an alignment of regimes considering that external

201 OECD Due Diligence Guidance for Meaningful Stakeholder Engagement, para. 2(2).
202 The key provisions of the interim Framework include that participation should start early, funded, transparent with available and accessible information, increase knowledge of participants, prioritize the most vulnerable, flexible, influences decision making and continually adapt. It, however, fails to include proper identification of stakeholders, distinguish between stakeholders and rights-holders, and involve the stakeholders/rights-holders in implementation, monitoring and follow-up. These elements are extensively considered in both the OECD Guidance and the HRIA toolbox.
204 Bice notes that “firms may be confounded by an ever-growing plethora of guidelines and initiatives from which to choose”. See Bice, supra note 180 at 163.
financial institutions (e.g. World Bank, IADB, etc.) are increasingly making RBC due diligence requirements core to their facility approval process. An aligned domestic process makes it easier for Canadian extractive companies to access RBC tools and is more likely to further aid the fulfilment of their human rights obligations.

One area in which the connection between IA and RBC is less clear is supply chain due diligence. While IA modes like life cycle IA and cumulative effects assessment might be relevant, the link to supply chain due diligence is still not evident. The most direct connection seems to have been drawn by the Global Reporting Initiative, which requires a reporting organization to report its management approach for “supplier environmental assessment”. However, we found no literature exploring this subject in the extractive sector context. There is, therefore, a need for research on the relevance of the IA framework to supply chain impacts in the extractive sector.

Although climate change has become one of the most pressing issues in recent years, there is very little Canadian scholarly or grey literature explicitly exploring the relevance of RBC tools to climate change in the extractive sector. As Seck contends, this is consistent with, the climate blindness of most international CSR standards. There is a need for further research on how RBC tools can help advance the fight against climate change in respect of prevention, mitigation, adaptation, and loss and damage.

The Australian and Danish examples suggest that human rights commissions are important institutions to for ensuring RBC and HRDD. This is, however, a practice yet to gain traction in the Canadian context. This is relevant in the IA sphere where more human rights issued begin to be integrated into it. As Kemp and Vanclay suggest, in order to embed HRIA into integrated IA process, it is essential to include human rights experts on the assessment team. The Canadian Human Rights Commission (CHRC) is a potential pool for such experts. Most of the RBC literature in the Canadian context focuses on the role of Canadian NCP, former CSR Counsellor or the newly established Canadian Ombudsman for Responsible Enterprise. While these dispute settlement bodies are primarily focused on Canadian companies abroad (although at least the OECD NCP has jurisdiction over companies within Canada), the HRC could play a vital role on RBC within Canada. However, we found no research on the role of the HRCs (both federal and provincial) in ensuring RBC by companies. There is need for research on how both federal and provincial HRCs can facilitate the promotion of RBC tools and adherence to HRDD standards by Canadian extractive companies, particularly, within Canada.

There is considerable RBC and IA literature on stakeholder engagement and the Canadian extractive sector. However, what meaningful participation in the Canadian context means seems to be still unclear.

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207 Seck’s work on climate change, CSR and the extractive sector appears to be the only literature on this subject. See Seck, supra note 92.

208 The OECD RBC tools, for example, do not mention climate change, with the only relevant reference being a tangential reference to ‘greenhouse gas emissions’. See OECD, OECD Due Diligence Guidance for RBC, supra note 25 at 50. GRI’s standard on emissions reporting is, however, an explicit climate change relevant tool. See GRI, GRI 305: Emissions 2016. There, however, appears to be no relevant tool on climate change adaptation and loss and damage.

209 Kemp and Vanclay, supra note 180 at 91.

The danger of homogenous classification of ‘stakeholders’ has been referenced in existing guides on stakeholder engagement. There is, albeit, little work done in the Canadian extractive sector context on how stakeholders should be classified and/or identified. **There is need for research on stakeholders’ classification and identification in Canada.** There is also need for clear distinction between stakeholder engagement in the Indigenous and non-Indigenous context. Attention should also be paid to the **effectiveness of pan-Indigenous tools vis-à-vis Indigenous community specific tools.** While Indigenous engagement has been considerably discussed in the literature, stakeholder engagement in other contexts (e.g. non-Indigenous women in Canada) is rarely explicitly attended to.
4. Implications

We have summarized some of the key findings of this research in the final section of the preceding chapter. Worth noting are the findings on the diverse and numerous RBC tools promoted by different bodies ranging from international organizations to Indigenous governments, the absence of a coherent framework for an efficient application of these tools, and the relevance of RBC and Human Rights Due Diligence tools to the IA processes of the extractive sector although research is lacking in the Canadian context. These findings are relevant to the rethinking of Canada’s approach to, and policies on, responsible business conduct, the practices of extractive companies, and the future research focus of RBC and IA scholars.

While Canadian RBC literature has overwhelmingly focused on the operations of Canadian extractive companies outside Canada, it is now clear that Canadian extractive companies also have RBC obligations within Canada. The previous understanding of RBC as being solely externally relevant informed the central promotional role played by the GAC and the EDC. Understanding that RBC is equally domestically relevant, necessitates other agencies of government with more domestic remit to take on the responsibility of actively promoting and monitoring RBC within Canada. The Australian and Danish examples suggest that federal and provincial Human Rights Commissions could be some of the key domestic RBC responsible agencies. The internal relevance of RBC tools further makes a coherent framework for the application of the various RBC tools necessary. Tables 1 and 2, while mostly representative rather than exhaustive, could be used to develop such coherent framework.

Such a framework would need to distinguish between externally and internally relevant tools; sectoral tools, and place-based tools (e.g. tools specifically designed by certain Indigenous communities or provinces). To avoid the possibility of cherry-picking tools, using one with the least requirements, or interpreting or applying tools in ways adverse to the interest of communities, the framework should establish minimum RBC standards which could potentially be drawn from common requirements in endorsed shortlisted RBC tools (see appendix 2 for an example of such shortlist). Such framework would also assist companies in fulfilling their RBC requirements efficiently. For example, an extractive company which has already met global best standards promoted by the framework will find it easier to meet the requirements of bodies like the IFC or World Bank if the services of such bodies were to be needed. This also applies to when RBC tools are used in the context of IA. This way, companies can efficiently, yet properly, satisfy IA and due diligence requirements.

Further, this study has potential implications for IA policies and practices. We have shown that scholars have drawn links between human rights, responsible business conduct, due diligence, and IA. Such link is, albeit, largely absent in the Canadian context. The IAA’s direct reference to factors like sustainability, gender, Indigenous, social, and economic impacts makes the use or application of RBC tools in the IA context even more viable and necessary. RBC tools on issues like human rights, gender, stakeholder engagement, and Indigenous relations can be used to develop guidance under the IAA. We have already pointed out a few loopholes in existing interim guidance (e.g. Guidance on Stakeholder engagement) under the Impact Assessment Act. These loopholes could be addressed using relevant RBC tools taking into cognizance the already highlighted weaknesses of the tools in the literature. Compliance with the IAA and its RBC-compliant Guidance could also be promoted by government agencies like Global Affairs Canada to Canadian extractive companies operating abroad. This will considerably help address the discordance between the practices of companies operating within and outside the country.
5. Conclusion

This knowledge synthesis report has focused on RBC and human rights due diligence tools promoted to Canadian extractive companies within and outside Canada as contained in the literature, how the tools intersect with IA, and global practices on the promotion of RBC tools and the application with the IA context. The tools identified in this work (appendix 2) are not represented as exhaustive. They are drawn primarily from academic and grey literature. Again, we recognize that there are other non-English and unwritten (or written) Indigenous and non-Indigenous guidance not captured here. In compiling the tools from the literature, we focused on the themes of stakeholder relations, Indigenous engagement, human rights, and gender. These inclusion criteria inform the type of tools we have identified here. This, however, also means that tools on issues like bribery, corruption, consumer protection, cooperatives, employee engagement, and governance have not been included in appendix 2. Despite these limitations, we consider the tools contained in appendix 2 as representative of relevant RBC tools on the themes we have focused on. On the key question of the intersection between RBC tools and IA, we find both regimes mutually reinforcing. We recommend that scholars consider the complementarity of RBC and IA practices. While further reforms might be needed to make the Canadian IA regime more consistent with RBC standards, we have noted that the Canadian Impact Assessment Act provides ample opening for the application of select RBC tools. Future research could focus on how this alignment should be operationalized.
6. Knowledge Mobilization

This knowledge synthesis targets a wide range of research users including local and Indigenous communities, women, environmental and human rights NGOs, government policy makers, extractive industries and industry associations, international RBC policy makers, and IA, RBC, and Indigenous scholars. We recognize that thus report will apply differently to potential users. To effectively communicate these findings, it will be necessary to communicate the report’s findings differently for the diverse knowledge users. At the same time, the concept of participation in RBC/IA processes inherently mandates the coming together of various stakeholders.

A draft of this report has been shared with a cross-cultural user and collaborators and the report has been modified to reflect their feedback. Findings of the study will also be disseminated at SSHRC/Impact Assessment Agency of Canada forum on Informing Best Practices on EIA and at a workshop at Dalhousie University (to be held virtually in early 2021). The workshop will provide a platform not only for reviewing the findings of the study, but to engender interaction among a cross-section of stakeholders in the extractive sector many of whom will be from Nova Scotia and the Atlantic region. Ideas on how some of the report’s recommendations, particularly on the integrated application of IA and RBC tools, can be operationalized will also be discussed at the workshop. This final synthesis report is posted in open access format on the Schulich School of Law digital commons, and stakeholder specific versions of the report will be prepared and shared with the different research users. This will include:

**Non-technical summary report:** designed for local and Indigenous community and women stakeholders, and human rights and environmental NGOs, this version will highlight issues raised during the Halifax workshop and will be presented and shared electronically with groups including PIWC, AFN, MiningWatch Canada, the Firelight Group, ECELAW, Ecology Action Centre, etc. Blog posts or online platforms like the Conversation will be used to further generate awareness.

**Policy recommendations:** Policy recommendations will be developed pertaining to meaningful public participation and respect for human rights and the how RBC stakeholder engagement and IA processes can be improved and/or engaged complementarily. These will be shared with relevant bodies, including the MAC as well as provincial IA responsible agencies, Canada’s National Contact Point for the OECD MNE Guidelines, and other international RBC policy makers, to initiate a dialogue on the effective integration of IA and RBC processes in Canada and beyond.

**Industry recommendations:** A summary of the implications of the synthesis report and recommendations for extractive industries will be prepared and discussed with industry associations, particularly the MAC and PDAC. The report and industry recommendations will also be electronically shared with law firms advising extractive industries and through virtual meetings in Toronto, Ottawa, and Halifax.

**Academic publications:** Academic articles will be developed from the findings made in the synthesis report and will include proposals for future research agenda(s). Open access journals favoured by RBC scholars and IA scholars will be sought out in order to target different academic audiences. Results will also be shared in scholarly conferences and meetings.
Appendix 1

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37. Matheison, Travis, “Managing Stakeholder Ambiguity in the International Mining Sector: The Case of Goldcorp Inc. in Guatemala” (2015), [unpublished, archived at Simon Fraser University].


43. OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas.

44. OECD Due Diligence Guidance for Responsible Business Conduct.


Appendix 2

List of Responsible Business Conduct Tools

Indigenous governance

1. Agreement between the Inuit of Nunavut Settlement Area and Her Majesty the Queen in Right of Ontario

Industry

27. MAC, Safety and health Protocol (2016)
28. MAC, Crisis management and communications planning Protocol (2018)
29. MAC, Preventing child and forced labour Protocol (2019)
32. MAC, Mine closure framework (2008)

International Organizations

38. International Labour Organization, ILO Tripartite Declaration
40. UNICEF, Children’s Rights and Businesses Principles
42. Global Reporting Initiative (GRI)
43. IFC Access to Information Standards (World Bank Group, January 1, 2012)
44. IFC Environmental and Social Sustainability Policy (Washington: IFC 2012)
45. IFC Performance Standards Guidance Notes 2012
46. IFC Performance Standards on Environmental and Social Sustainability (World Bank Group, January 1, 2012)
47. Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, Intergovernmental Mining Policy Framework: Mining and Sustainable Development
49. International Council on Mining and Metals Sustainable Development Framework
52. UN Guiding Principles on Business and Human Rights
54. OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas
55. OECD Due Diligence Guidance for Responsible Business Conduct
56. ICMM, Integrating Human Rights Due Diligence into Corporate Risk Management Processes (2012)
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97. Canadian and Indigenous Boreal Leadership Council’s “Free, Prior, Informed Consent in Canada” and “Understanding Successful Approaches to Free, Prior and Informed Consent in Canada”