First Nation-Local Government Agreements:

A Pathway Toward Reconciliation

by

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Abstract

Across Canada, Indigenous leaders and organizations are working with mayors and councils to establish and maintain respectful relationships. This research considers how intergovernmental agreements between First Nations and local governments present opportunities to expand and improve upon the national effort to pursue truth and reconciliation at the local level. Semi-structured interviews were conducted with practitioners and policy-makers to identify characteristics of successful relationship-building and determine how they align, or misalign, with the theory and practice of reconciliation. Protocol and service agreements, guiding documents, policies, and regulatory texts were analyzed to consider which of these characteristics are put into action and which are left out. Findings suggest that there is a pressing need for guidance on how First Nations and local governments can improve policy and practice to enhance and sustain relationships consistent with reconciliation. Recommendations are presented that address these fundamental limitations, which constrain the capacity for both parties take part in equitable planning practices that build relationships. Despite reconciliation efforts generally pursued by the Crown, this research suggests that there is a broadening potential for these intergovernmental agreements at the local level to support the spirit of reconciliation.

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List of Acronyms

AANDC	Aboriginal Affairs and Northern Development Canada
AMM	Assembly of Manitoba Municipalities
ATR	Addition to Reserve
BC	British Columbia
EFN	Entitlement First Nation
FCM	Federation of Canadian Municipalities
MOU	Memorandum of Understanding
RCAP	Royal Commission on Aboriginal Peoples
TLE	Treaty Land Entitlement
TRC	Truth and Reconciliation Commission
UN	United Nations

1.0 Introduction

The relationship between Indigenous and non-Indigenous peoples in Canada has been historically defined by colonial policy that sought to diminish treaty rights and abolish Aboriginal identity. This relationship was the subject of the *Report of the Royal Commission on Aboriginal Peoples* (1996), which urged Canadians to begin a national process of reconciliation. While the report and its findings opened the eyes of many Canadians to the realities of colonization in this country (Uribe, 2006), its recommendations to the Crown[1] were largely ignored (TRC, 2015). The Truth and Reconciliation Commission's (TRC) final report, *Honouring the Truth, Reconciling for the Future* (2015), recapitulated the need for mutually respectful relations in Canada. Recognizing the Crown's failure to pursue RCAP's recommendations, the TRC issued 94 Calls-to-Action for all levels of government to walk the path of reconciliation together. Five were directed toward local government[2]. Before the TRC's final report was released, cities and municipalities across Canada, including Calgary, Edmonton, and Toronto, had already begun to reflect upon injustices toward Indigenous peoples and to celebrate their culture through a 'year of reconciliation' (Heritz, 2016). Reconciliation efforts at the local level represent pathways toward recognizing the history of colonization in Canada and

[1] The Crown embodies two levels of government in Canada: the provincial or territorial governments and federal government (Sancton, 2011).

[2] In the context of this practicum, the term 'local government' captures the governance structures that derive their power from provincial or territorial authorities (Sancton, 2011). This includes, but is not limited to, cities, municipalities, towns, villages, and regional districts.

rebuilding a nation-to-nation relationship based on mutual respect, recognition and responsibility (Koch, 2016; RCAP, 1996).

This research is positioned at the political and administrative interface between First Nations and local governments to develop a greater understanding of their intergovernmental relationship (Koch, 2016). The emergence and character of intergovernmental relations between First Nations and local governments has been of growing interest among practitioners and academics alike (Belanger & Walker, 2009; Federation of Canadian Municipalities [FCM], 2011; Fiscal Realities, 2014; Nelles & Alcantara, 2011, 2014). Recent work by Alcantara and Nelles (2016) identify the informal and formal relationships that arise at the local level through agreements negotiated between First Nations and local governments. Koch's 2016 research considers on-the-ground intergovernmental planning relationships between the two governments as bringing about mutual benefits and fostering a pathway toward reconciliation[3]. However, despite a growing body of intergovernmental agreements between First Nations and local governments across Canada, very little consideration has been paid toward how these agreements take up the spirit of reconciliation.

Policy that guides reconciliation efforts in Canada have been primarily pursued by the Crown (RCAP, 1996; TRC, 2015). Following the release of the TRC's final report (2015), the Government of Canada has taken steps to fulfill its goal of developing a new relationship with

[3] Language around 'pathways to reconciliation' is borrowed from recent scholarship (*see* Koch, 2016), practice (*see* FCM, 2016) and policy (*see* Government of Manitoba, 2016) that use the phrase to capture the journey toward reconciliation. Use of the term 'pathways' is intended to position this research within this existing body of work.

First Nations in the spirit of reconciliation (Government of Canada, 2016; Prairie Research Associates [PRA], 2016). Canada's adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) reflects the government's commitment to recognizing Indigenous rights in accordance with Section 35 of the *Constitution Act, 1982*, and to developing a relationship with First Nations based on cooperation and respect (Government of Canada, 2016). Among the recognized rights of Indigenous peoples are those related to reserves: lands held in trust by the Crown for the use and benefit of specific First Nations communities (Indigenous and Northern Affairs Canada [INAC], 2015). The Government of Canada has renewed its commitment to fulfill outstanding treaty promises by establishing reserve land with land adjacent to an existing reserve or located in another urban or rural area away from existing lands (2016).

Reserves in urban environments create a unique opportunity to foster relationships between First Nations and local governments. Defined by their proximity to, or location in, established local government jurisdictions, urban reserves are typically satellites to principal reserves created for the economic, cultural, and social betterment of band members (Walker & Belanger, 2013). When land selected by a First Nation for conversion to reserve status is within a municipality, the federal Additions to Reserve (ATR) policy (2016) stipulates that First Nations must negotiate agreements with the local government for basic municipal services, such as policing, sewage, water, and education. As First Nation communities increase their land-base in the urban environment, the coordination between First Nations and local governments concerning land use, service provision, resource sharing and cultural and economic development can have a significant impact on both governments and their communities (Nelles & Alcantara, 2014).

In addition to opportunities that these intergovernmental relationships present (Peters, 2007), there are also challenges to overcome (Mountjoy, 1999; SSCAP, 2012; Walker & Belanger, 2013). A report by the Standing Senate Committee on Aboriginal Peoples (SSCAP) determined that "these negotiations can cause extensive delays, and that this problem can be exacerbated if a municipality is not entering into these negotiations in good faith" (2012, p. 14). The differing governance and taxation systems between local governments and First Nations, combined with a lack of effective communication, contribute to the barriers towards intergovernmental relationships (Peters, 2007). Mountjoy (1999) notes that the two parties often pursue intergovernmental planning relationships without having a prior experience working together, and in certain cases, they may even have had a shared history of conflict. Tensions over the establishment of urban reserves by First Nations have arisen repeatedly across the Prairies (Walker & Belanger, 2013) and, as this practicum explores, a reevaluation of intergovernmental frameworks that support the relationship between First Nations and local governments is overdue (SSCAP, 2013).

Across Canada there is considerable variation amongst the agreements that support the establishment of urban reserves. Saskatoon, Saskatchewan has a policy whereby the First Nation and the City enter into a protocol agreement before the reserve is created to establish ongoing communication and develop common resolution approaches (City of Saskatoon, 2008). City council and administrative staff in the City of Brandon, Manitoba have taken steps to ensure that the municipal government, as well as the community, understand the role they play in the success of urban reserves (Westman, 2016). Regional Community to Community (C2C) Forums, which are jointly organized by the First Nations Summit and the Union of British Columbia

Municipalities, bring together First Nations and local governments across British Columbia (BC) to engage in relationship building through conferences and seminars (Federation of Canadian Municipalities [FCM], 2016). Resources for developing intergovernmental agreements are not limited to the public sector; in 2015, the planning firm Urban Systems released a guidebook to help support First Nations communities in developing and re-negotiating agreements.

Despite these growing body of resources that support the establishment of urban reserves (Walker & Belanger, 2013), First Nations, planning practitioners, and federal, provincial and local governments currently receive conflicting direction on how the relationship between First Nations and local governments should take up the spirit of reconciliation (Koch, 2016). And while policy-makers and practitioners may consider reconciliation on a professional basis through mandates handed down by the federal government, the different ways in which they approach it in intergovernmental relationship building may not be conducive to the fulfillment of the Calls-to-Action put forward by the TRC (2015). These fundamental limitations constrain the capacity of both parties to take part in equitable planning practices that build relationships. Legislation and policies surrounding urban reserve creation in Manitoba, and across Canada, fail to alleviate these limitations and may serve to deepen the divide between First Nations and local governments (SSCAP, 2012).

1.1 Research Questions and Objectives

The purpose of this research is to examine how the characteristics of successful intergovernmental agreements, as defined by relevant practitioners and policy-makers, are reflected in existing intergovernmental agreements between First Nations and local governments

across Canada. Specifically, this research examines protocol and services agreements to interpret how they reflect these characteristics and explores what pathways toward reconciliation the agreements promote. To help guide my analysis of these intergovernmental agreements, I have conducted semi-structured interviews with policy-makers[4], practitioners, and planning consultants familiar with these agreements to identify what they believe to be effective characteristics that support cooperative intergovernmental planning relationships. The opinions expressed in the interviews have informed a content analysis of intergovernmental agreements from across Canada in the pursuit of identifying characteristics that support pathways toward truth and reconciliation in the urban environment.

As discussed in Chapter Two, there is presently minimal scholarship into the capability of provincial and municipal policies that support intergovernmental relations. This practicum seeks to address the gap in understanding that exists in relating the theory and practice of reconciliation to intergovernmental policies and to provide recommendations for future Manitoba planning framework. It has its roots in Madeline Koch's Masters of City Planning thesis, *Manitoba Relationship Stories: When First Nations and Local Governments Plan Together* (2016). In an effort to capture and some of the conclusions Koch came to concerning intergovernmental agreements and reconciliation, several of the terms and references employed in this research correspond with her own. This research seeks to expand upon Koch's work by recognizing how significant intergovernmental planning between First Nations and local governments can take up

[4] A policy-maker is a member of a government department, legislature or other organization who is responsible for making new policy (Auerbach, 2012).

the spirit of reconciliation. Additionally, this research seeks to provide a series of recommendations to further enhance the process of reconciliation at the local level.

My research investigates:

1. What are the characteristics of a successful intergovernmental agreement between a First Nation and local government? How do these characteristics align, or misalign, with the theory and practice of reconciliation?
2. How, and to what degree, are these characteristics reflected in existing intergovernmental agreements across Canada? Which characteristics are recognized? Which are left out?
3. What lessons for municipal involvement in the processes of reconciliation, particularly in Manitoba, arise out of this research?

To begin to answer these questions, it is first important to review the history which have led up to this point. Chapter Two provides an overview of the historical and policy context of this practicum by briefly outlining the trajectory of First Nation and local government relations in Manitoba and, more broadly, across Canada. Chapter Three outlines three overlapping themes of scholarship critical to this research: 1) the urban experience; 2) the interface between First Nations and local government, and; 3) the theory and practice of reconciliation. Together, these themes provide the underlying theoretical foundations for the research. Chapter Four presents the methods of data collection and analysis employed by this research and reflects upon the ethical considerations, limitations, and biases. Chapter Five begins to answer the research question by developing four characteristics of a successful intergovernmental relationship between a First Nation and local government, as identified by the nine interviews participants. Chapter Six

analyzes how these characteristics are reflected in existing intergovernmental agreements. Chapter Seven develops a discussion on this analysis framed by characteristics that were recognized in the agreements and characteristics that were left out. The chapter culminates in key lessons for practitioners, policy-makers, and planning consultants. Chapter Eight, the concluding chapter, presents a summary of the key findings and offers perspective on the contribution to planning practice. Additionally, a series of recommendations are made that arise from this research to enhance reconciliation at the local level in Manitoba.

Consistent with the terminology of the TRC's final report, the term 'Indigenous' is used throughout this practicum to reference Indigenous peoples generally, and 'Aboriginal' when it is the name of a specific group, policy or organization. Both terms are inclusive of First Nations, Inuit, and Métis peoples of Canada. The term 'First Nation'[5], which excludes Inuit and Métis peoples, is used throughout this practicum to denote a political group or its individual members. Because this research is based in Manitoba, and ultimately lends its recommendations to the Manitoba context, the term 'First Nation' is predominantly used. This is a reflection of the high degree of Entitlement First Nations (EFN) establishing urban reserves across the province, as will be discussed below. In reference to non-Indigenous peoples and non-Indigenous governments the terms 'settler' and 'settler state' are used throughout this practicum. These terms are intended to invoke non-Indigenous peoples and governments "potential complicity in

[5] The term 'First Nation' has historically described communities organized under a Band governance structure, consistent with the *Indian Act*. However, First Nation communities that sign modern treaties, as is common in BC, are typically self-governing and therefore not guided by the *Indian Act* (INAC, 2015).

systems of dispossession and violence" (Lowman & Barker, 2015, p. 1). This practicum is cautious of the language that these sources use and draws attention to inconsistencies among key terms whenever necessary.

2.0 Tracing the Intergovernmental Relationship Between First Nations and the Settler State

Outlined in the *Report of the Royal Commission on Aboriginal Peoples* (RCAP, 1996), the relationship between First Nations and the settler state is broadly defined by four time periods: separate worlds, contact and cooperation, displacement and assimilation, and negotiation and renewal. The period of 'separate worlds' is indicative of the physical, cultural, political and societal separation of Indigenous and European societies (RCAP, 1996). Following the arrival of settlers, the period of 'contact and cooperation' describes the period between the fifteenth and seventeenth centuries in which Indigenous and European society's interactions shifted from sporadic contact to sustained economic trade. Settlers' desire for land and resources escalated in the eighteenth and nineteenth centuries during the period defined as 'displacement and assimilation' (RCAP, 1996). It was during this period that the federal *Indian Act* was crafted in 1876, putting into place a dramatic shift in attitude and policy directed at First Nations across Canada (TRC, 2015). By the nineteenth century, the relatively peaceful relationship between Indigenous and non-Indigenous society had become maligned by policy that sought to isolate First Nation and extinguish their way of life (TRC, 2015). The most recent period, 'negotiation and renewal,' signals a way forward as First Nations and settler society work towards a renewed relationship based on a spirit of mutual recognition, respect, responsibility and sharing (RCAP, 1996).

This chapter is inspired by Koch's (2016) examination of these four periods, and seeks to follow this structure to present the history and policy context, both in Canada and in the Province of

Manitoba. This research seeks to expand upon the period of 'negotiation and renewal', especially as it relates to services and protocol agreements between First Nations and local governments. Specifically, this chapter seeks to identify policy that embodies past Crown-First Nation relationships and supports the relationship between First Nations and local governments today. Importantly, while the four periods seek to capture First Nation-settler state relationships, the processes that they describe are non-linear and may be ongoing or reoccurring. This chapter identifies the policy foundations of this relationship and how it has been developed in recent years at the local level. Current literature is used to summarize some of the most relevant policies in place, while the findings from RCAP (1996) and the TRC (2015) provide historical context to the chapter.

2.1 Canadian Context

Following a period broadly defined by the *Royal Commission* (1996) as 'contact and cooperation', when settlers and First Nations established relations pertaining to trade, friendship, and peace, tensions began to emerge as European settlement expanded (Borrows, 1994; Millette, 2011). Borrows (1994) attributes these displacement pressures on First Nations to the violence that erupted between them and the British in the eighteenth century, as First Nations resisted the taking of their lands. As conflicts over jurisdiction intensified, the movement and livelihood of First Nation communities were increasingly controlled by the European settlers (Borrows, 1994). In the mid-eighteenth century, European administrators, military officers and missionaries began to assemble Indigenous communities into 'reserve villages' along Canada's southern territory (Millette, 2011). Millette (2011) argues that this was "done to provide lands for Europeans and to

'manage' First Nation communities, appropriate their lands and resources, and to govern over the same lands and resources" (p. 23). These practices reflect early efforts by the settler state to colonize Canada and thereby secure sovereignty over the land.

King George III's issue of the *Royal Proclamation of 1763* formally established the colonial settlement and subsequent planning of Canada (Borrows, 1994). The *Proclamation* was the first intergovernmental document of its kind to lay out jurisdictions between First Nations and the Crown, recognizing First Nations' pre-existing title over North America (Craft, 2013). Out of the *Proclamation* emerged a 'trust relationship' between the Crown and First Nations whereby the Crown had a responsibility to protect First Nation lands and interests (Treaty Relations Commission of Manitoba (TRCM), n.d.). However, the relationship defined by the *Proclamation* was uneven, ascribing dominion and sovereignty of British rule over the territories First Nations occupied (Borrows, 1994). Ultimately, the policies outlined in the *Proclamation* established that "First Nations, for the most part, would not be integrated with the European population" (Borrows, 1994, p. 18). This policy was the primary motivation for the pre-confederation treaties, including the *Upper Canada Treaties*, the *Robinson Treaties*, and the *Douglas Treaties*, which sought to secure lands for settlement, farming, and mining (TRCM, n.d.).

Following Confederation in 1867, and amidst pressures of settler migration, the Government of Canada pursued the expansion of settlements in the North-West Territories (TRCM, n.d.). Between 1871 and 1921, eleven numbered treaties were negotiated between the Crown and First Nations spanning territories from present-day Ontario to Alberta and portions of British Columbia and the Northwest Territories. While these numbered treaties were intended to follow

the precedent set by pre-confederation treaties (TRCM, n.d.), the recognition of First Nations as original peoples, as outlined in the *Proclamation*, was partially lost (Fleras & Elliott, 1992). These numbered treaties were often written on unfair terms, were poorly enforced, and did not respect the spirit and intent of First Nation signatories towards sharing of the lands (RCAP, 1996; Craft, 2013). Craft (2013) notes that, despite the Crown's commitment to First Nations' customary norms, nuances of Indigenous legal systems were lost during treaty negotiations.

When the *Indian Act* came into effect shortly thereafter, First Nations were increasingly managed by Indian Agents, officials of the Crown, and eventually by the Government of Canada (Millette, 2011). The *Indian Act* represents a departure from the principles of the *Royal Proclamation*, whereby Indigenous peoples are treated as "wards of the State" instead of founding partners (Godlewska & Webber, 2007, p. 15). Shewell (2012) notes that the net effects of the *Indian Act "*were to deny the original peoples of Canada any partnership in Confederation, to subjugate and strip them of their autonomy, and to devalue their cultures" (p. 171). With the last of the numbered treaties signed in 1923, policy-makers had left behind the principles of the *Royal Proclamation* for the paternalistic approach outlined in the *Indian Act* (Godlewska & Webber, 2007). While the policy at this time still considered Indigenous peoples a problem, "emerging liberal concerns about Indigenous welfare and protection" began to arise (Porter, 2010, p. 29). In light of these competing concerns, reserves were considered "the solution to both containment and welfare" (Porter, 2010, p. 29).

Defined by the *Indian Act* as a "tract of land, the legal title to which is in Her Majesty," reserves are territories that have been "set apart by Her Majesty for the use and benefit of a band" (*Indian*

Act, 1985, c. 1-5). Fleras and Elliott (1992) note that reserves were conceived as 'holding pens' for the express purpose of clearing the land of Indigenous presence. First Nation communities were regularly relocated by the Crown and their reserves diminished to accommodate commercial interests (RCAP, 1996). By the early twentieth century, reserves were sporadic and piecemeal communities that had very little regard for how First Nations lands were traditionally planned and used (Millette, 2011). Reserve land, as characterized by the *Indian Act*, "had simply not been designed to support self-sufficiency and autonomy" for First Nations peoples that lived there (Millette, 2011, p. 25).

During the eighteen and nineteen centuries, many First Nations were displaced from their traditional lands and forced to move to isolated reserves for the express reasons of limiting future land disputes between Indigenous and settler communities and to assimilate individuals living on-reserve (RCAP 1996). This period, demarcated by the *Royal Commission on Aboriginal Peoples* as an era of 'displacement and assimilation' (1996), can best be described as "cultural genocide" (TRC, 2015, p. 1). The TRC's final report recounts the stories of Indigenous survivors who were taken from their communities as children and sent to Indian Residential Schools (2015). They were deprived of their culture and language in an effort by the Canadian government to assimilate distinct Indigenous cultures and nations. Articulated by RCAP (1996) and more recently the TRC (2015), this assault on First Nations across Canada played out over several generations and continues to constrain many aspects of individuals' lives today.

Toward the end of the 1960s, First Nation across Canada gained greater recognition of their rights and title through a growing movement of key First Nations organizations, influential court

cases, and grassroots activism (RCAP, 1996). At this time, political dialogue in Canada began to include First Nation concerns that had previously been ignored (RCAP, 1996). *Calder et al. v. British Columbia (Attorney-General)*, launched by Frank Calder and the Nisga'a Tribal Council, was a key moment in this epoch. Until this time, the *Indian Act* and its subsequent revisions had maintained autocratic control over nearly all aspects of First Nations' life since its enactment in 1876. The *Calder* case raised three key issues: whether Aboriginal title existed; whether Nisga'a title had been lawfully extinguished; and whether the Court had the jurisdiction to make such a ruling given the Nisga'a had not been granted permission by the Crown (Godlewska & Webber, 2007). While the 1973 Supreme Court of Canada's decision ultimately did not rule in favor of the Nisga'a Tribal Council, the issue of Nisga'a title contributed to the growing momentum of First Nation organizations to defend their rights and title. This ruling, coupled with countless other efforts by Aboriginal leaders, culminated in the inclusion of First Nation rights into Section 35 of the *Constitution Act, 1982* (Godlewska & Webber, 2007).

Section 35 of the *Constitution Act, 1982* recognizes and provides constitutional protection to the Aboriginal and treaty rights of the Aboriginal peoples. While 'Aboriginal rights' relate to the "practices, traditions and customs that distinguish the unique culture of each First Nation," Aboriginal title is the "right to the land itself" (Aboriginal and Northern Development Canada [AANDC], 2010). Aboriginal rights are based on the simple fact that Indigenous peoples are original occupants, and reflects their right to engage in activities, customs, and traditions from before European contact. Although Aboriginal title was upheld by the Crown as intrinsic rights to territory in the *Royal Proclamation of 1763* (RCAP, 1996), it was not until after the *Calder* decision that the Supreme Court of Canada recognized Aboriginal title to land pre-dating the

arrival of European settlers (Slatterly, 2005). The *Calder* decision demonstrated that such title existed outside of the laws imported to Canada. Therefore, the Crown recognizes that when Europeans 'claimed' what is now Canada, they did so "in the face of pre-existing Aboriginal sovereignty and territorial rights" (Slattery, 2005, p. 436).

The *Calder* decision, among other legal decisions, established the doctrine of the 'honour of the Crown,' whereby the Crown must act with the virtue of honour in its engagement with First Nations (Slattery, 2005). Beyond simply a doctrine that seeks to achieve honest practices when interacting with First Nations, the honour of the Crown develops an obligation to respect past treaty relationships. Flowing from the doctrine is the 'duty to consult', which is "intended to ensure that Crown decision making regarding development of natural resources respects Aboriginal interests in accordance with the honour of the Crown" (Lambrecht, 2013, p. 54). The Crown's duty to consult was established only recently through a trilogy of Supreme Court cases (*Haida Nation v. British Columbia (Minister of Forests)* [2004], *Taku River Rlingit First Nation v. British Columbia (Project Assessment Director)* [2004], *and Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* [2005]). Significant to this practicum, the Crown's duty to consult offers a departure from previous understandings of Aboriginal rights and title and represents a new legal doctrine into how the Crown mediates and interprets Section 35 of the *Constitution Act, 1982*.

While the duty to consult ensures that federal and provincial governments respect First Nations rights and title when exercising Crown powers, arguments have been made for local governments to also follow the process (Dorries, 2012; Fraser & Viswanathan, 2013; Imai &

Stacey, 2014). Lambrecht (2013) notes that while the duty to consult may be the responsibility of the Crown, the Supreme Court of Canada has asserted that parts of the process can be delegated to proponents or third parties. As creatures of the province, vested with authority to make land-use decisions that could affect Aboriginal rights and title, Imai and Stacey (2014) claim that the duty to consult should flow through local governments. Recently, however, the British Columbia (BC) Court of Appeals (*Neskonlith Indian Band v. Salmon Arm (City),* 2012) ruled that local governments are not responsible to uphold the duty to consult. In reaching the decision, Justice Newbury was concerned that every decision made by a local government "ranging from issuance of business licenses to the designation of parks" would need consultation (Imai & Stacey, 2014 citing Neskonlith*,* 2012, para 72). Critics of the BC Court of Appeal's decision note that, while there may be legitimate concerns about the responsibility of consultation, by limiting the duty to consult, local government are withdrawn from important relationships with First Nations (Imai & Stacey, 2014). Furthermore, the uncertainty that it creates could jeopardize relationships between First Nations and local governments down the road and curtail the urban aspirations of Indigenous peoples.

Despite recognition by the Crown of pre-existing Aboriginal sovereignty and territorial rights (Slattery, 2005), there has been very little "coming to terms" with how this operates at the municipal level between First Nations and local governments (Porter & Barry, 2014, p. 23). As First Nations establish reserves within the geographic boundaries of municipalities, planning efforts in urban municipalities have taken a fundamental shift to support First Nations (Walker, 2008). Indigenous and local governments from across Canada, and especially in western provinces (Walker, 2008), have begun creating partnerships with one another on a range of

issues (Dorries, 2012; Fraser & Viswanathan, 2013). These partnerships have fought the perception of urban Indigenous peoples as a social problem (Carter et al., 2004) and have proven beneficial to both communities in a variety of ways (Peters, 2007). While many of these partnerships have been for practical purposes, such as securing municipal services to First Nations communities, other partnerships have included joint management arrangements and increased communication protocols. Partnerships have proven to produce better government programs and more efficient service delivery (Lipka, 2015; Fraser & Viswanathan, 2013). While the interface between First Nations and the Crown remains to be legally the strongest, partnerships formed at the local level reveal an opportunity to strengthen First Nation relations with the settler state.

2.2 Manitoba Context

As outlined in the previous section, the relationship between First Nations and the Government of Canada has been defined by several distinct periods (RCAP, 2996). The present-day relationship is the product of a historical power imbalance, whereby the Government of Canada denied Aboriginal rights and title. Having long been divided by this power imbalance, the two parties have recently taken steps to repair the relationship. Amidst the dynamics between First Nations and the Crown played out across Canada, the planning context in Manitoba may offer an insight into the relationship between First Nations and local governments.

Between 1871 and 1906, the Government of Canada entered into seven numbered treaties (1, 2, 3, 4, 5, 6, & 10) with First Nations in Manitoba (Treaty & Aboriginal Rights Research Centre of Manitoba [TARRCM], 1994). The Crown agreed to set aside an amount of reserve land for the

use and benefit of the signatory First Nations based on the band's population and a per capita formula negotiated within the specific treaty (TARRCM, 1994). However, in part due to misleading population surveys from the time treaties were signed, the land set aside was insufficient for many First Nations (TARRCM, 1994**)**. Those First Nations that did not receive the land they were promised under the treaties are referred to as Entitlement First Nation (EFN). Amidst the period of Aboriginal rights and title recognition outlined in the previous section, twenty-one EFN in Manitoba formed the Treaty Land Entitlement Committee (TLEC) in 1977 to negotiate with the Crown in the pursuit of satisfying outstanding land agreements. On May 29, 1997 the TLEC, Province of Manitoba, and the Government of Canada entered into the *Manitoba Framework Agreement* (MFA), "set[ting] out the ways and means that the Parties… have agreed to fulfill and satisfy the outstanding land obligations" (TLEC, n.d.).

Eight First Nations in Manitoba that did not sign the *Manitoba Framework Agreement* sought individual agreements with the Crown to satisfy the land debt owed to them, as all EFN can file a TLE claim. Typically, a TLE settlement agreement specifies an "amount of land that a First Nation may either purchase on a willing buyer/willing seller basis, or selection from unoccupied Crown land, or both in some cases, within an agreed to acquisition or selection area" (INAC, 2017). This process is not unique to Manitoba. In Saskatchewan, thirty-three First Nations that also did not receive their entire land allocations under their treaties have jointly pursued a similar framework agreement to settle outstanding TLE (INAC, 2014). Increasingly, EFN in both Manitoba and Saskatchewan have used TLE claims to purchase non-contiguous lands within the geographic boundaries of a local government with the intention of converting that land to reserve (INAC, 2014).

While the majority of urban reserves are created as a result of TLE, other claim settlements provide the means for First Nations to purchase land within the urban environment. Specific claims and comprehensives claims[6] were established by the Government of Canada in 1973 to make amends for First Nations' land degradation and to satisfy the long-standing land debt owed to them (Indian and Northern Affairs Canada [INAC], 2003). In Manitoba, the urban reserves arising from TLE settlements arise from specific claims (INAC, 2017). Once land is purchased or selected according to either the terms of the TLE settlement agreement or a land claim settlement, the First Nation may submit a proposal to the Government of Canada for land to be added to the First Nations reserve through the federal Additions to Reserve (ATR) Policy. The ATR Policy both establishes a formal process for informing and consulting a local government on the conversion of land to reserve status and, within the limits of constitutional powers, provides guidance on how First Nations and local governments might work together to address mutual interests. There are three categories that an ATR proposal belongs to: legal obligations, community additions, and new reserves/other policy. The legal obligations, of which TLE falls under, recognizes that the Crown must satisfy the terms of the treaties. Together, TLE and ATR represent the policy mechanisms that enable EFN in Manitoba to satisfy outstanding treaty terms and expand their reserve land-base.

[6] Specific land claim arose from the "non-fulfillment of Indian treaties and other lawful obligations, or the improper administration of land and other assets under the *Indian Act* or formal agreements," whereas a comprehensive land claim is "based on the concept of continuing Aboriginal rights and title which have not been dealt with by treaty or other legal means" (INAC 2003, p. 8).

When urban reserves are established, the land is removed from the local government's land base and placed under the control of First Nations' Band Council jurisdiction (FCM, 2015). In accordance with the ATR *Policy Directive 2016*, the local government has an opportunity to express their concerns and discuss issues of mutual interest which relate to the urban reserve creation proposal. At this stage, the First Nation is responsible for negotiation of agreements with the local government, which they must formalize in writing. The federal *Policy Directive 2016* is guided by a "good neighbour" approach, whereby "any discussions between First Nations and local governments must be conducted with good will, good faith, and reasonableness" (INAC, 2016, p. 21). Agreements between First Nations and local governments are negotiated across Canada to ensure that services are provided to the land.

A municipal service agreement is required to provide essential services to a reserve and address the provision of other services and ensure by-law compatibility. The services agreement is negotiated between the First Nation and the neighbouring municipality to determine what services the local government can supply to the reserve (INAC, 2016). Municipalities often provide a range of services, such as police, fire, snow removal, water/sewer, in exchange for a fee. There are also instances of service sharing, whereby the services contained on the reserve land are used to offset this fee (INAC, 2016). Within these agreements, and occasionally in separate protocol agreements, are procedures to establish ongoing communication and dispute resolution strategies (INAC, 2016). While INAC may provide facilitative or technical assistance to support the negotiations, Canada is not a signatory to any service agreements that are entered into between First Nations and local governments (INAC, 2016).

In 2001, Manitoba Justice released the *Reference Manual for Municipal Development and Services Agreements* (MDSA) to provide guidance to local governments and TLE First Nations pursuant of urban reserve creation in Manitoba. Recognizing the benefits of working together to facilitate the TLE process, the *Reference Manual* was a response to calls by both First Nations and local governments for further information on the process for establishing the necessary services agreements (Government of Manitoba, 2001). Included in the *Reference Manual* are examples of provisions that may be used in a service agreement to provide guidance on how various issues might be addressed. The document recognizes that it "will not provide answers to all of the questions and issues that may arise through the negotiation" of service agreements, but rather to raise awareness of issues with the understanding that complicated issues evolve over time (p. i).

Following the release of the Truth and Reconciliation Commission (TRC) report, *Housing the Truth, Reconciling for the Future*, 95 Calls-to-Action were issued to all levels of government as well as non-governmental organizations. The Government of Manitoba, among the other provinces, was asked to develop framework legislation which would respond to the Calls-to-Action. This led to the development of *The Path to Reconciliation Act* (2016) that sets out the government of Manitoba's commitment to advancing reconciliation. *The Path to Reconciliation Act* is the first reconciliation legislation in Canada (Government of Manitoba, 2016), intended to guide Manitoba's reconciliation activities which relate to ongoing engagement with First Nations and the development and implementation of a reconciliation strategy. The Indigenous and Municipal Relations Department is responsible for this legislation, and the work it does developing intergovernmental relationships at the local level.

In 2017, the Association of Manitoba Municipalities (AMM) took another step to establish a more open and effective TLE process in Manitoba through the release of a TLE Information Toolkit. The Toolkit is the effort of a working group established under a Partnership Agreement (2015) between the AMM, the TLEC, and the Treaty Relations Commission of Manitoba (TRCM). The Toolkit includes a comprehensive *Frequently Asked Questions* document and a Community Accord template. Beyond Manitoba, calls for more information on the First Nation-municipal agreements by government bodies and Indigenous communities have resulted in several guiding documents, such as Ontario's *Municipal-Aboriginal Relationships: Case Studies* (2009). Nationally, the Federation of Canadian Municipalities (FCM) has developed a *Service Agreement Toolkit* (2011) to promote collaboration and understanding between First Nations and local governments.

While First Nations and local governments represent broader community interests, their approaches to decision making, governance structure, values, beliefs and culture may vary significantly and, combined with a lack of effective communication, contribute to the barriers between an intergovernmental relationship (INAC, 2016; Peters, 2007). Differences exist with respect to each community's decision making process, whether based in tradition or legislation. Further, First Nations and local governments may have different methods of interacting with their community within their decision making processes (RCAP, 1996). Identified in a report by the Standing Senate Committee on Aboriginal Peoples (SSCAP), negotiations between First Nations and local government can cause extensive delays to the reserve creation process, are inconsistent across the country, and are overly complex (2012). This is a problem that can be exacerbated if a municipality is not entering into these negotiations in good faith (SSCAP, 2012). Despite the

guiding documents intended to support First Nation-municipal relations, tensions over the establishment of urban reserves by First Nations have arisen repeatedly across Manitoba (Walker & Belanger 2013,). As this practicum notes, a reevaluation of intergovernmental frameworks that support the relationship between Indigenous communities and municipalities is overdue (Standing Committee on Aboriginal Peoples [SCAP], 2013).

2.3 Summary

The relationship between First Nations and the settler state since contact has been considered through several distinct periods (RCAP, 1996). The present-day period seeks to return to a relationship when the two worked together as equals. As this chapter has sought to show, for a long time this relationship was maligned by colonial policy that sought to dismantle Aboriginal society and identity. In the last century, efforts by First Nations and the settler state sought to restore a peaceful relationship and achieve autonomy across Canada. The culmination of upper court cases in the latter half of the twentieth century and early twenty-first century have evoked the original agreements between the Government of Canada and First Nations and secured Aboriginal rights and treaty rights in the *Constitution Act, 1982*. Identified in the TRC's final report (2015), recent efforts by Crown are focused on reconciling past injustices toward First Nations at the local level.

For many First Nations across Canada, particularly in the province of Manitoba, pursuing the fulfillment of TLE claims is a meaningful pathway toward reconciliation. When reserve land is created within the geographical boundaries of a local government, federal *Additions to Reserve Policy* and provincial *Treaty Land Entitlement Framework Agreements* (if applicable) set out

provisions and processes for their creation. However, despite guidelines and best practices in place there is "uncertainty and trepidation" at the local level where experiences may be lacking (Walker, 2008). For many local governments, the ATR process represents the beginning of the intergovernmental relationship with First Nations that may otherwise have not existed (Koch, 2016). In negotiations between First Nations and local governments on the terms of service agreements and by-law compatibility, there is potential for tension to arise. How each party approaches the relationship, and in what way reconciliation is attributed to it, has not been explored in scholarship or in practice. The following chapter addresses the literature surrounding this gap in understanding.

3.0 Literature Review

Amid growing recognition of Aboriginal rights and title, planning scholarship has developed a broader understanding of ways in which urban municipalities support Indigenous aspirations and confront systems that restrict it (Peters, 2007; Walker, 2008). The following chapter outlines literature covering three overlapping themes critical to this research, including the urban experience of Indigenous peoples, the governance interface between local governments and First Nations, and the theory and practice of reconciliation. These themes provide the overarching theoretical foundations to the research contained in this practicum and constitutes a framework through which intergovernmental agreements are critically analyzed.

3.1 The Urban Experience of First Nations

In response to the growing population of young, highly mobile, Indigenous peoples living in cities across Canada (Cardinal, 2006), scholars have begun to shift their attention from provincial and federal horizons to the urban experience of First Nations (Peters, 2007; Nelles & Alcantara, 2011: Walker, 2008; Walker & Belanger, 2013). For Walker (2008), improving the interface between First Nations and the urban environment demands policy and practice that reflect the needs and aspirations of urban Indigenous peoples. While there is capacity and desire both within urban Indigenous organizations and among local governments to achieve this (Cardinal, 2006; RCAP, 1996), there are considerable improvements yet to be made (Walker, 2008). Walker examines the relationship between First Nations and local governments, adding five priority areas for improvement: citizen participation and engagement; governance interface-municipal and Aboriginal; Aboriginal culture as municipal asset; economic and social

development, and; urban reserves, service agreements and regional relationships (2008). Recognizing the capabilities of local government, Walker writes that municipalities "should not wait around for other governments and should improve work with Aboriginal communities because they have the power to do so and it is impractical not to" (2008, p. 23). Amidst this growing scholarship, the Canadian government has begun to recognize opportunities for local governments to position Indigeneity firmly in practice (*see* AANDC, 2010). However, Koch (2016) writes that the direction municipal-scale planning professions receive in identifying Aboriginal rights and recognizing unique claims remains largely inadequate.

While scholarship points to ways in which local government can address growing urban Indigenous populations through new programs and projects (Walker & Belanger, 2013), recent scholarship has confronted the fact that Indigenous organizations rarely guide the policies designed to benefit them (Heritz, 2016; Walker, Moore, & Linklater, 2012). Horak (2012) reflects that the recognition Indigenous peoples do receive is often as a "marginal population in need of assistance, not as valued assets or productive contributors to urban localities" (p. 148). When Indigenous peoples are included the planning process they are persistently 'fixed' to a predetermined position (Barry & Porter, 2011). As a result, First Nation's capacity to decide on their own terms what is best for their community and traditional territories is constrained (Barry & Porter, 2011). In the interest of governments to include a range of viewpoints on a particular issue, First Nations are often included in community consultation as a 'stakeholder' (Walker, Moore, & Linklater, 2012). In addition to being a category that First Nations have long rejected (Barry, 2012), Porter notes that the term "rises from historically constituted colonial power relations" (Porter, 2010, p. 290). Beyond 'tokenistic' involvement of First Nations in local

governments, “there has been little ‘coming to terms’ with a simple ontological fact of settler-colonialism: that its cities are built on Indigenous lands” (Porter & Barry, 2015, p. 23).

The establishment and development of municipalities in settler states occupy traditional territories of First Nations that were taken through appropriation of land and forceful removal of Indigenous peoples (Matunga, 2013; Porter & Barry, 2015; Porter, 2010; Sandercock & Attili, 2010). Under the guise of ‘nation-building’, settler states sought to “remove any material evidence/reminder and memory of Indigenous communities, their places, sites, resources, and villages, and replace it with a new colonial order, ultimately creating a ‘new’ materiality and memory for/of settler communities” (Matunga, 2013, p. 9). While Mantunga was writing about New Zealand, the settlement of Canada reflected this practice and, as the author notes (2013), the narrative of ‘nation-building’ endures in Cities and municipalities today. For example, Sandercock and Attili investigate the legislative and policy mechanisms that Burns Lake inflicted upon the Ts’il Kaz Koh First Nation. The conflict culminated in the municipality shutting off water and sewage services to the reserve in 2000 (Sandercock & Attili, 2010). This relationship, which saw the eradication of First Nation territorial claims and replacement of settler claims, reveals the imbedded colonial culture of planning (Porter, 2010).

As First Nations establish reserves within the geographic boundaries of local governments, the relationships that transpire are at risk of being imbued with the legacy of colonial racism and violence. As First Nations are “persistently rendered ‘out of place’” in the urban environment, the Aboriginal rights and title they hold are extinguished (Porter & Barry, 2015, p. 22). In ‘A Road Runs Through It’, Wood notes how non-Indigenous communities are often oblivious to the

existence of their Indigenous counterparts living close by, and few see connections between the fates of their communities (2003). Indigenous and non-Indigenous people inhabit separate worlds, "one greatly away of the other, and one largely oblivious" (Wood, 2003, p. 469). The city, in its own insistence on jurisdiction, does not recognize Aboriginal identification with the land, "nor acknowledge the history of the relationship between the two communities" (Wood, 2003, p. 465).

While Indigeneity, as it relates to peoples and culture in cities, has received concerted attention from scholarship (*see* Didluck & Piombini, 2000), far less understood are Indigenous spaces in the urban environment (Peters, 2007; Walker & Belanger, 2013; Wood, 2003). Walker and Belanger (2013) highlight the establishment of reserves within the geographic boundaries of local governments in their discussion of pathways for Prairie cities to improve the vitalities of urban Indigeneity. Recognizing the opposition that urban reserves are met with, the authors note that this resistance is consistent in 'not in my backyard' (NIMBY) behavior, but also in deeply rooted settler mentalities held by the non-Indigenous community (2013). In these Prairie municipalities, Walker and Belanger (2013) reflect that city councils may wish to put forward a relationship-building declaration and Aboriginal accord to ease political tension surrounding urban reserve creation.

3.2 Governance Interface - Local Government and First Nation

Although scholars have traditionally focused on the interface between First Nations and the Crown (Walker, 2008), there has been growing attention toward the intergovernmental relations between local and Indigenous governments in Canada (Nelles & Alcantara, 2011; Walker & Belanger, 2013). This section is inspired by the 2008 research by Ryan Walker: 'Improving the

Interface between Urban Municipalities and Aboriginal Communities'. The interface between First Nations and local governments is identified by Walker as critical to strategic planning "in a transformative future-seeking process with Aboriginal communities" (p. 33). This section seeks to expand upon Walker's work by highlighting the boundaries, both perceived and real, that exist at this interface, especially as they relate to the establishment of urban reserves.

For many scholars writing on the interface between Indigenous and non-Indigenous governments, jurisdictional boundaries between them are often identified as establishing uneven power relationships and demarcating areas where Indigenous rights 'exist' (Barry & Porter, 2011; Dorries, 2012; Porter, 2013). Critically, the demarcation of rights is muddled by the jurisdictional boundaries present in municipalities. The interface between local governments and First Nations, which constitutes the research site of this practicum, is acutely affected by the jurisdictional boundaries that exist between them. Outlined in section 92 of the *Constitution Act, 1867,* municipalities function as 'creatures of the province' whereby provincial or territorial authorities have exclusive power over local government matters (Sancton, 2011). In part because the treaties were signed between First Nations and the Government of Canada, academics have traditionally focused on the relationships between First Nations and the Crown (Dorries, 2012). Dorries (2012) notes the boundaries that are created between these two competing jurisdictions "allows for a rigid separation of municipal, provincial and federal sphere of governance" (2012, p. 72). It is this 'jurisdictional logic', Dorries writes, that separates Indigenous politics from the sphere of local land use planning (2012).

The issue of jurisdictional boundaries extends to whether municipalities have the legal duty to consult with First Nations on projects that affect Aboriginal and treaty rights (Dorries, 2012; Fraser & Viswanathan, 2013). The 'honour of the Crown', and the authority it enables government to engage First Nations, is suspended above municipalities. As identified in the previous chapter, despite being 'creatures of the province', local governments and private contractors have pursued consultation with First Nations consistent with the duty to consult and discovered practical benefits (Fraser & Viswanathan, 2013). Despite arguments that local governments are not "equipped legislatively or with the financial resources to deal with distinct Aboriginal affairs" (Walker, 2008, p. 28), intergovernmental arrangements are increasingly being made between First Nations and local governments (Nelles & Alcantara, 2011). By working together regularly in pursuit of economic development initiatives, instead of simply issues at hand (Dorries, 2012), First Nations and local governments have fostered closer relationships (Fraser & Viswanathan, 2013). Shared goals, and recognition of the mutual benefits, offers the impetus to pursue joint planning.

Recently, planning scholarship has identified agreements between First Nations and local government as a key interface between Indigenous and non-Indigenous governments (Nelles & Alcantara, 2011; Walker, 2008; Walker & Belanger, 2013). Perhaps the most comprehensive study of intergovernmental agreements between First Nations and local governments has been the 2011 work by Nelles and Alcantara. Their analysis of 93 intergovernmental agreements indicates that localized agreements "are necessary for dealing with a host of practical problems that affect both communities, jointly and separately" (Nelles & Alcantara, 2011, p. 330). In their most recent contribution to the topic, Alcantara and Nelles (2016) explore the dynamics of

agreement negotiations between First Nations and local governments. They attempt to untangle the actions taken by senior levels of government, a history of polarizing events, institutions, and the processes of decision-making to determine the nature of cooperation that emerges between First Nations and local governments. Nelles and Alcantara (2016) write that, in addition to a strong personal relationship between the leadership of First Nations and local governments, a sense of imperative shared by communities, in particular, expanded the possibilities for collaboration. Specifically, Alcantara and Nelles (2016) identify intergovernmental partnerships that emerge from the provision of municipal services as one example of an imperative that has the potential to solidify relationships between First Nations and local governments.

Amidst this recognition that the establishment of urban reserves fosters relationship opportunities (Peters, 2007), many scholars have also reflected on the conditions that constrain the relationship (Koch, 2016; Walker & Belanger, 2013). Within the cross-cultural planning context, Koch's research (2016) identifies how "local governments tend to have more substantial organizational resources than First Nations, which can leave First Nations feeling uncertain and unfamiliar during their dealings with local governments" (2016, p. 114). In the negotiation of service agreements, Koch says, local governments tend to exhibit confidence in their powers (2016). Walker notes that "municipalities are still sometimes left out of the picture in the substantial negotiation of urban reserves and land settlements in some parts of Canada, and are brought in as 'junior partners' to deal with service and compatibility issues after other major decisions have been reached" (2008, p. 33). Walker (2008) attributes this to the less formalized relationship that First Nations have with local governments, as opposed to the Crown. Uncertainty between the

two parties is noted by Walker (2008) to breed distrust, which could jeopardize 'good neighbour' relationships between them (p. 33).

Yet as federal, provincial, and non-governmental bodies begin to look into the relationship between First Nations and local governments attributed to urban reserves and to provide guidance for future collaboration (*see* Federation of Canadian Municipalities' *Land Management Project*), mutually respectful relationships remain the exception and not the norm between the two communities (Walker & Belanger, 2013). As Canada pursues a national effort for reconciliation, the establishment of urban reserves reveals an important opportunity to take up the spirit of reconciliation (Koch, 2016).

3.3 The Theory and Practice of Reconciliation

Reconciliation describes the transformative healing process between Indigenous and non-Indigenous peoples by way of formally addressing historical and ongoing grievances and recognizing certain 'truths' (Fairweather, 2006; Reagan, 2010; RCAP, 1996; TRC, 2015). Reconciliation, within the context of this research, lends itself to the Latin root "to make friendly again" (Pløger, p. 108). This definition is consistent with the TRC's own definition, in which reconciliation is a return to the nation-to-nation relationship between Indigenous and non-Indigenous peoples based on mutual respect and understanding (2015). As noted by Pløger, finding common ground does not necessarily mean the discourses, interests, or choices of Indigenous and non-Indigenous peoples will be compatible (2015, p. 108). Reconciliation, therefore, is understood to create space for both nations and invite opportunities that develop the relationship between them.

Reconciliation is a necessary and nuanced process that seeks to promote the truths of First Nations peoples as original occupants on territory that is now Canada and of the violence and abuse inflicted on Indigenous peoples through the actions of settler colonialism (RCAP, 1996). Meaningful reconciliation is an ongoing process that seeks to reflect upon institutionalized injustices (as outlined in the previous chapters) and work towards a balanced relationship (Fairweather, 2006). The 94 Calls-to-Action issued by the TRC (2015) represents a renewed effort by the Crown to acknowledge and address the experience and needs of the growing urban Indigenous population. And while most of the Calls-to-Action require leadership from the Crown, "municipal governments are rolling up their sleeves to support reconciliation as a national challenge that is felt deeply at the local level" (FCM, 2015, p. 3).

In addition to expanding policy, a growing body of literature has begun to recognize the potential for reconciliation at the local level (Heritz, 2016; Alcantara & Nelles, 2016; Walker & Belanger, 2013). As outlined above, cities have both been critical to the settlement of the colonial states and to the perpetual reproduction of colonialism in Canada. And while there is not yet a wide body of literature on local government's role in Indigenous reconciliation (Alcantara & Nelles, 2016), there are a few tangible examples of how this might be achieved. Heritz traces the efforts municipal governments have made to engage Indigenous peoples (2016). Vancouver, like many other municipalities across Canada (FCM, 2015), has declared a 'Year of Reconciliation' to reflect upon past injustices. The Federation of Canadian Municipalities' (FCM) 'Pathways to Reconciliation' identifies a set of tools meant to help share, sustain, and grow efforts to pursue reconciliation within cities and municipalities across Canada. The document captures the efforts

made by First Nations and local governments across Canada to inspire and motivate other communities to take up the Calls-to-Action and take the first steps toward reconciliation.

The inherent right of First Nations to self-determination, or self-government, is an important element of reconciliation raised by many scholars (Corntassel & Holder, 2008; Porter, 2004, 2010; Regan, 2010; Walker, 2006, 2008). The UN's *Declaration on the Rights of Indigenous Peoples (2007)* defines self-determination as the right to "freely determine their political status and freely pursue their economic, social and cultural development" (Article 3). Speaking to the Canadian context, Walker adds that self-determination describes the desire of First Nations to conduct their own affairs and "emanates from prior occupancy of Aboriginal peoples to the creation of a Canadian state and its governments" (2008, p. 24). Walker reflects that self-determination is largely misunderstood in non-Indigenous society, where it is often perceived as a complete "separation, segregation, and special treatment" of Indigenous peoples (2008, p. 24). Coates and Morrison (2009) support this point, writing that "the success of Aboriginal self-government is contingent on effective and harmonious relations with local, regional, provincial/territorial, and national governments" (p. 118). In the urban environment, First Nations have been establishing partnerships with the settler state that takes up the freedom to pursue economic, social and cultural, consistent with self-determination (Walker, 2008). By establishing partnership in areas such as housing, education, and health, Indigenous peoples develop a greater stake in the city and a deeper relationship with the settler state.

Another element of reconciliation important to First Nation-local government relationships are the Calls-to-Action issued by the Truth and Reconciliation Commission (TRC). The 94 Calls-to-

Action attempt to redress the legacy of residential schools and advance the process of Canadian reconciliation. Five of these calls are issued directly toward local governments, while other include local government among calls for all orders of government. These calls represent the most tangible examples of direction given to local governments on how to engage with the national effort of reconciliation. However, before the TRC process began in 2009, municipalities have seen significant changes in how we understand the issues and relationships with Indigenous peoples that live in cities (FCM, 2015). This has culminated in new and revitalized relationships with local Indigenous leaders and organizations.

There is growing consideration among scholars and practitioners (Alcantara & Nelles, 2016; FCM, 2016) of the partnerships being created at the local level as an influential and achievable way of pursuing reconciliation. Given the significant policy implications of these agreements, a number of federal and provincial government departments (*see* INAC, 2016), as well as municipal and Aboriginal umbrella organizations across Canada (*see* Association of Manitoba Municipalities [AMM], 2017; Islands Trust, 2016), have shown a strong interest in initiating and sustaining cooperative intergovernmental relations at the local level. For instance, many policy-makers "have independently or jointly produced reports and conferences aimed at helping local and Aboriginal governments initiate and sustain cooperative intergovernmental relations with each other" (Nelles & Alcantara, 2014, p. 600). Across Canada, a 'quiet revolution' (Alcantara & Nelles, 2016) has been brewing as First Nations and local governments recognize the cultural and economic benefits that these relationships create (Abele & Prince, 2002; Nelles & Alcantara, 2011).

3.4 Summary

This chapter has demonstrated that although there is growing attention amongst Indigenous and non-Indigenous governments to the tenuous relationship between First Nations and local governments, very little attention has been paid toward processes of reconciliation at the local level. And while reconciliation has begun to be examined in academia, there is minimal scholarship into the capacity of provincial and municipal policies that support intergovernmental relations, which affect Aboriginal and treaty rights. This practicum seeks to address the gap in understanding that exists in relating Indigenous reconciliation to intergovernmental policies and to raise awareness of the relative limitations of Manitoba's current planning framework. With a rising tide of specific land claims being put forward across Canada, as well as TLE claims in Manitoba, the opportunities to walk the path towards reconciliation set out by the Truth and Reconciliation Commission (2015) is more urgent than ever.

This literature review has provided the basis for an analytical framework for the content analysis in pursuit of identifying elements of the intergovernmental agreements that recognize First Nations' right to self-determination, reflects on municipalities as sites of colonialism, and consider new ways for local governments and First Nations to build a relationship based on mutual understanding and respect. Together, these indicators comprise a framework to advance discussions on ways in which existing and future intergovernmental relationships between First Nations and local governments can take up the spirit of reconciliation. This qualitative research examines intergovernmental agreements between First Nation and local governments and explores what characteristics take up the theory and practice of reconciliation.

4.0 Methods

The underlying purpose of this qualitative research study is to explore intergovernmental agreements between First Nations and local governments. Specifically, this research aims to consider implications for the Manitoba planning context and provide recommendations to improve upon it. While the number of intergovernmental agreements is growing across Manitoba through the fulfillment of TLE claims (Walker & Belanger, 2013), the number of agreements remains limited (Nelles & Alcantara, 2011). Given that service agreements have a much longer history and are more numerous in British Columbia and Saskatchewan (Nelles & Alcantara, 2011), the agreements considered for this research were drawn from across Canada in an attempts to gather lessons that could be applied to the Manitoba context.

In order to assess intergovernmental agreements between First Nations and local governments, data was collected in two phases using the methods of semi-structured interviews and text-based content analysis. These complementary methods were used to improve internal validity of initial findings and ensure the accuracy of the results (Creswell, 2009). During the first phase of research, semi-structured interviews were conducted with nine Indigenous and non-Indigenous individuals familiar with intergovernmental agreements at the local level. Participants' experiences with these agreements, primarily, pertains to work they have conducted in the province of Manitoba. Interview data was triangulated through a content analysis of supplementary texts, guidelines, frameworks and policy pertaining to the First Nation-local government interface. With the information gathered from this first phase of research, the second phase comprised of an assessment of intergovernmental agreements. This was conducted through

manifest and latent content analysis of twenty agreements pertaining to the provision of municipal services and protocols for cooperation. Each of these two phases discusses the ethical considerations made to ensure that the research approach followed Chapter 9 of the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* addressing ethical practices for research involving First Nations, Inuit and Métis Peoples of Canada. The final section of this Chapter considers the biases and limitations of this research, and the steps I have taken to mitigate against them.

4.1 Phase I: Expert Interviews & Guiding Documents

To begin to answer the research questions outlined in Chapter One, this first phase of research was conducted by means of semi-structured interviews as well as document analysis to determine characteristics integral to intergovernmental agreements between First Nations and local governments. These methods are described in greater detail below.

4.1.1 Phase I: Methods of Interview Data Collection

Semi-structured interviews were conducted with nine policy-makers and practitioners to access expert opinions on characteristics integral to intergovernmental agreements. Often considered 'crystallization points', experts can serve to shorten time-consuming data collection processes and offer access to information that would otherwise be unattainable (Bogner et al., 2009). Interview participants include practitioners in First Nation and local governments, federal and provincial bodies, as well as the private planning sector. While the intergovernmental agreements considered for this research are only signed between a local government and the First Nation,

individuals from the Crown and the private planning practice are often involved to provide guidance and support (FCM, 2011). Therefore, their opinions were considered necessary to the understanding of the agreements and their participation required. I had initially intended to interview two individuals from each area of employment, for a total of ten interviews. Ultimately, however, I was only able to interview one employee from the federal government. By interviewing practitioners and policy-makers from different organizations involved in the negotiation of the intergovernmental agreements, the data represents a multi-faceted understanding of the process. Further, with the cross-cultural nature of this research, it was essential to access First Nation viewpoints and considerations.

The interview participants and their employment positions relative to intergovernmental relationships are listed below. In an effort to conceal the identities of interview participants, interviewees were assigned pseudonyms and their employers were excluded to maintain confidentiality.

Tegan: Tegan has worked as a planning consultant in Winnipeg for the past two decades. Having been hired by both First Nations or municipalities, an increasing amount of her work has been to support relationship-building between the two. Her experiences pertain to land use planning and includes First Nations acquiring services from a municipality or converting land to reserve status.

Matt: Matt is a planner based out of Winnipeg who has worked for First Nations in Northern and Southern Manitoba for much of his career. He is primarily employed by First Nations seeking community consultation and engagement assistance. Matt says that his work with municipalities

has been limited, “especially because of the fact that there hasn’t really been a lot going on in Manitoba over the last many years” (personal communication, March 20, 2017).

Ethan: Ethan is a senior employee with the Manitoba Region of Indigenous and Northern Affairs Canada (INAC). Recently, he was involved in a committee in Manitoba which critically analyzed intergovernmental agreements between First Nations and local governments. An aim of the committee was to educate parties involved in the creation of reserves in urban areas.

Ben: Ben is a city manager of a Manitoban municipality that has a servicing agreement with two neighboring reserves, one of which is an urban reserve. While the agreement between the two communities was created before his tenure, ongoing discussion and negotiations with them has kept Ben very close to the matter.

Giles: Giles is a First Nation Elder who works for a provincial body guided by the mandate set out by the Treaty Relations Commission. His role with the organization is primarily educational, bringing him in contact with the discussions and facilitations between First Nations and local governments across the province.

Nick: Nick is a senior member of the executive committee for the Government of Manitoba. He has prior experience with a provincial body that provided education and engagement on treaty issues in Manitoba.

Josh: Josh is a band member and employee of a local First Nation. His experience includes work on his Nation's Treaty Land Entitlement Agreement as well as active negotiations with a local government for services.

Jasper: Jasper is a city manager in a Manitoban community with past experience negotiating servicing agreements for an urban reserve. In addition to council, he was responsible for reviewing, making changes, providing input and engaging in discussions with the First Nation. Through these negotiations they determined what services the community could, or couldn't, provide to the reserve.

Jordan: Jordan is a former employee of a Manitoba First Nation with urban reserve land in the province. He is currently employed by an organization that assist bands across the Prairies interested in, or in the process of, developing their own land laws.

In selecting interview participants, I drew upon the networks of my supervisory committee as well as individuals I had already been introduced to through the Master of City Planning program. Initially, I had prepared to asks participants who I should speak with next following our interview (Creswell, 2009). However, given that I had reached my original goal of interview participants, this was not necessary. This was the result of the general willingness of policy-makers, practitioners and planning consultants to share their knowledge and experience of intergovernmental agreements.

Although I had intended to conduct each of the interviews face-to-face, three of the interviews were conducted over-the-phone. I had prepared for the possibility of over-the-phone interviews,

and had downloaded an application for my phone designed to record the conversation. In the case of one of the face-to-face interviews, the participant declined to be recorded. I had also prepared for the possibility of this occurring, and I took notes during the interview and recorded my reflection after the interview was completed. Because I had not met many of the interviewees before the interview was conducted, often speaking only briefly over the phone or by email, we typically had a short conversation before the interview began. This dialogue before the interviews took place was intended to build rapport between myself and the interviewee. For interviewees that I did know outside of the research, we often spend a few minutes catching up on topics outside of the research. The interviews, including preliminary conversations, lasted anywhere between 45 and 145 minutes.

To allow for reflection, ongoing explanation and in-the-moment opportunity for clarification, the interviews were semi-structured (*see* Appendix A for sample interview schedule). The interviews began by asking the participants to share their employment background and with clarifying questions to determine what aspects of their job related to creating agreements between First Nations and local governments. I sought to establish how the interview participants were involved, what their role was, and what proportion of their work related to it. I followed these questions by asking how, from their employment position, they would define an effective agreement between a First Nation and local government. I wanted to know what the desired outcomes were and what could be done to improve existing agreements, from their standpoint with an organization or government. Next, I asked what the necessary characteristics of a written intergovernmental agreement were for relationship-building. Were necessary characteristics

limited to written agreements or if there were characteristics beyond them that were useful? As this was an important question to my research, I probed the interview participants for answers.

Once the interviews were completed the transcripts were stored securely on my computer and transcribed with the software ExpressScribe. To ensure the clarity and accuracy of the transcript, I transcribed the interviews immediately after the interview was complete. Following transcription of the interviews - and collection of the notes for interview that was not recorded - I shared the transcripts with the particular interviewee to ensure the accuracy of what they had said. Included in this email to the participants was a reminder that the Consent Form (Appendix B) had acknowledged that the transcript be returned within two weeks. Each of the interviewees met this deadline and their comments and clarification was taken into account. Generally, very little feedback was provided from the participants.

4.1.2 Phase I: Method of Interview Data Analysis

Once the transcripts were reviewed by their respective interview participants I analyzed the documents in the coding software NVivo to identify any themes that occurred, both within individual interviews and between them. Through a manifest analysis of the transcripts, I identified key terms, phrases, and references to policies in order to understand the broader intersections between local governments and First Nations. I searched the surface content of each transcript and examined them for indicator terms that arose repeatedly. Next, I flagged sections within each transcript and between multiple transcripts to identify themes and concepts that arose. Using the NVivo software, I coded the transcript and wrote memos to capture key trends

emerging from the transcripts. Although I had originally intended to complete this stage of the research after all of the interviews were complete, I coded the transcripts on a rolling basis.

Early in each interview I asked participants to identify principles, guidelines, or other resources that they used to navigate interactions between First Nations and local governments. The information obtained from this question revealed that while the interview participants relied primarily on their past experiences, there were resources that they used beyond the federal government's Additions to Reserve Policy. The work by Fiscal Realities Economics, Urban Systems, as well as the Association of Manitoba Municipalities was identified as providing guidance on the work that the participants do. I collected these document, many of which emerged from BC. Among the organizations identified were Fiscal Realities Economists (FRE). FRE is a private consulting firm based on Kamloops, BC, that works with the private sector to help First Nations identify their 'economic footprint' through an analysis of their economic potential. They develop plans and policies to help First Nations in negotiations with the federal and provincial governments. The guidelines produced by Federation of Canadian Municipalities (FCM) were also identified by a number of interview participants as providing navigation for the process of negotiation First Nation-local government service agreements.

Content analysis of fifteen guiding documents enabled triangulation of the initial findings from the nine interviews and of the analytic framework that was used (Creswell, 2009). By providing a broader perspective on intergovernmental relationships and agreements, the content analysis allowed me to more fully analyze and contextualize the interview data. The guiding documents considered for this research are outlined in Table 4.1. These documents are a collection of related

information, resources, or tools that guide First Nations and local governments to develop a plan or organize efforts to follow evidence-based recommendations or meeting evidence-based practice standards. They provide action-oriented guidance for practitioners and policy-makers to apply the findings to their own work. With a central focus on identifying the characteristics recognized by the interview participants, the surface content of the guidelines, toolkits, and agreement primers were analyzed. As these documents carefully considered the principles and procedures of negotiating service agreements between First Nations and local governments, document analysis was a logical method of inquiry. By understanding the processes and interactions between the two governments, this analysis facilitated the triangulation of the interview data and positioned the characteristics within the planning context in Canada.

Table 1: Secondary Documents

Title	Produced By/For	Year
Partnerships in Practice	Centre for Municipal-Aboriginal Relations	2002
Report Concerning Relations Between Local Governments and First Nation Governments	Provincial/Territorial Senior Officials of Local Government Committee	2002
Building Relations with First Nations: A Handbook for Local Governments	Union of British Columbia Municipalities; Lower Mainland Treaty Advisory Committee	2005
The Government of Saskatchewan Guidelines for Consultation with First Nations and Metis People	Government of Saskatchewan	2006
Municipal-Aboriginal Relationship: Case Studies	Government of Ontario – Ministry of Municipal Affairs and Housing	2009
Service Agreement Toolkit	Federation of Canadian Municipalities	2011
BC Service Agreement Primer	Federation of Canadian Municipalities	2012
Guide to a Facilitated Service Agreement Between First Nations and Local Governments	First Nation Tax Commission	2013
Achieving Benefits for First Nations and Local Governments	Prepared for the National Aboriginal Economic Development Board by Fiscal Realities Economists	2014
Pathways to Service Delivery	Urban Systems	2015
First Nations Engagement Principles	Islands Trust	2016
First Nations Communication: Tone and Language Guide	Islands Trust	2017
TLE Toolkit	Association of Manitoba Municipalities; the Treaty Land Entitlement Committee of Manitoba, and; the Treaty Relations Commission of Manitoba	2017

4.1.5 Ethics

The principals of free, prior, and informed consent were central to this research and the relationships I formed with the interview participants (*see* Appendix B: Ethics Approval Certificate). Included in the initial email with the interested interview participants was a consent form and 'Project Backgrounder' describing research objectives of the project (*see* Appendix C). Further, a letter of introduction outlined of the potential risks and benefits associated with participation in the research (*see* Appendix C). Upon receiving a response indicating interest in participating in the interview, I replied with an email answering any questions or concerns the participants might have. Any additional steps to provide free and prior consent from interview participants were taken on an individual basis. Some of the participants, for example, had concerns about the structure of the interview and the questions that I might ask. In those instances, I provided more information about the interview schedule.

Potential risks associated with the proposed research related to the small community involved in intergovernmental planning were identified and steps were taken to protect their identity. In order to minimize any potential risk to the participants, I assigned them each pseudonym to protect their identity. With the participant's permission, however, I did include some of their employment information. Highlighted in the Research Participant Information and Consent Form (*see* Appendix C), information pertaining to the interviewee's place of employment, while not expressively stating the example job title or organization, provides important context to their perspectives. If the interviewee were not comfortable revealing their job title or employer title, I

replaced it with a generic descriptor of the organization. Every effort was made to ensure that the confidentiality of the interview participants was protected.

4.2 Phase II: Intergovernmental Agreements

The second phase of this research was conducted through content analysis of a total of ten protocol agreements and eleven services agreements. The content analysis chartered the characteristics identified by the interview participants in the first phase in these twenty-one agreements.

4.2.1 Phase II: Methods of Data Collection

The second phase of this research examined intergovernmental agreements between neighbouring First Nations and local governments from across Canada. Specifically, this phase included a text-based content analysis of protocol and service agreements. These agreements represent the primary means through which First Nations and neighbouring local governments create and sustain relationships, either for the exchange of services or coordination of planning efforts. Outlined below, a service agreement is a formal agreement for the provision of services and payment. These agreements are legally binding and enforceable. Protocol agreements seek to strengthen the operation of the two communities through communication and cooperation.

Service Agreement: As local governments are equipped to provide infrastructure services to their communities, when a First Nation's reserve land base is expanded agreements between the two government must be negotiated to ensure that services continue to be provided to the land.

Services agreements are outlined in the Additions to Reserve Policy and identified by Manitoba's Reference Manual as providing essential services to reserves. Municipal Service Agreements (MSA) are broadly defined in the 2016 ATR policy directive as including a description of the services that the local government is able and willing to supply to the First Nation, the form the basis for the charges levied by the local government, payment due dates and terms , and fees for administration and legal costs, etc. (INAC, 2016, p. 31). These agreements may need to address the provision of other services, by-law compatibility, a consultation and dispute resolution process for matters of mutual concern, or potential net tax loss adjustments. Importantly, service agreements are entered into by First Nations and local governments; while the federal and provincial governments may assist either party, they are not signatories to service agreements.

My research reviews four services agreements are between First Nations and local governments in British Columbia (BC), six in Saskatchewan, and one in Manitoba. Eight of the agreements are comprehensive services agreements, which reference to a wide-ranging set of services required by the First Nation. Three of the agreements, however, pertain to just a single service. Of the eleven service agreements analyzed in this research, only one agreement, between Westbank First Nation and the Regional District of Central Okanagan, includes the sale of services from the First Nation to the local government.

Table 2: Services Agreements

Title of Agreement	Parties	Year
Reserve Servicing Agreement	District of North Vancouver, BC; Tsleil'waututh Nation	2005
Service Agreement	Regional District of East Kootenay, BC; ?Akisq'nuk First Nation	2007
Municipal Services Agreement	City of Yorkton, Saskatchewan; Kahkewistahaw First Nation	2007
Local Services Agreement	Regional District of Central Okanagan, BC; Westbank First Nation	2007
Municipal Services and Compatibility Agreement	City of Regina, Saskatchewan; Piapot First Nation	2007
Police Services Agreement	The Regina Board of Police Commissioners, Saskatchewan; Star Blanket Cree Nation	2007
Service Agreement	Village of Lebret, Saskatchewan; Starblanket Cree Nation	2008
Municipal Development and Services Agreement	City of Winnipeg, Manitoba; Long Plain First Nation	2010
Water Agreement	City of Meadow Lake, Saskatchewan; Flying Dust First Nation	2011
Fire Protection Agreement	City of Meadow Lake, Saskatchewan; Flying Dust First Nation	2013
Services Agreement	Town of Ladysmith, BC; Stz'uminus First Nation	2014

Protocol Agreement: Protocol agreements address general cooperation commitments between First Nations and local governments, with the purpose of establishing guidelines or principles for improving communication and dialogue between the governments and by extension, their citizens (Government of Alberta, 2017). Protocols, within the context of this research, include memoranda of understanding (MOU), community accords, relationship agreements and communications agreements. The ATR policy directive (2016) notes that the document may address, at a minimum, issues such as consultation, costs, engagement, services, compatibility of uses, methods of implementation, decision making processes, and creation of implementation committees or working groups. Generally, communities that have established a mutual interest

and identified common community or regional goals will enter into a communications protocol agreement. This ensures that regular meetings and ongoing information sharing will occur beyond the current terms of elected governments. Increasingly, additional protocol agreements, in areas such as culture, heritage and economic development, are being established between First Nation and municipalities (Government of Alberta 2017). Many of these agreements also establish intergovernmental coordination and initiate regular intergovernmental meetings concerning these issues.

The level of detail regarding commitments contained in these agreements varies greatly. A few agreements outline specific roles for both elected and staff officials, including a formal meeting schedule, while others focus on the benefits of working together without detailing exact plans. The terms of the protocol may be as specific or vague as the parties prefer, "including whether the agreement is intended to be binding or non-binding (FCM, p. 26). And while signees may agree that it is not intended to be a legally binding agreement, the parties may wish that confidential issues not be disclosed. The relationship and protocol agreements reviewed for this research included seven agreements from BC, one agreement from Saskatchewan, one agreement from Manitoba, and one agreement from Ontario.

Table 3: Protocol Agreements

Title of Agreement	Parties	Year
Memorandum of Understanding on Cooperation and Communication	Regional District of Fraser-Fort George, BC; Lheidli T'enneh First Nation	2002
Protocol Respecting a Regional Accord	Regional District of Comox-Strathcona, BC; Xw'emalhkwu First Nation	2004
Protocol Agreement on Culture, Heritage and Economic Development	District of Powell River, BC; Tla'amin First Nation	2004
Memorandum of Understanding	City of Nanaimo, BC; Snuneymuxw First Nation	2005
Protocol Agreement	The City of Nanaimo, BC; Snuneymuxw First Nation	2005
Protocol Declaration of Understanding	City of Regina, Saskatchewan; File Hills Que'appelle Tribal Council	2007
Thompson Aboriginal Accord	City of Thompson, Manitoba; Aboriginal governments and peoples in and around the Thompson region	2009
Agreement	District of West Kelowna, BC; Westbank First Nation	2010
Memorandum of Understanding	Town of Ladysmith, BC; Stz'uminus First Nation	2012
Cultural Collaboration Agreement	City of Markham, Ontario; Eabametoong First Nation	2017

Despite the number of unfulfilled treaty promises in Manitoba, the establishment of reserve land and their associated agreements have been delayed by various site-specific complications and process deficiencies (AMM, 2017). The agreements were selected based on the specification that the agreement be between a First Nation and a local government. While there are many service agreements between First Nations and the Crown, and in some instances between First Nations, this was not the research site of this practicum. A further requirement was that the agreements needed to have been approved by both parties governing structures. The collection of intergovernmental agreements was a multi-stage processes that ultimately amassed twenty-one agreements.

In part because BC has the greatest amount of First Nations in the country, "which helps to explain why it has the highest number of service agreements and the most interest in establishing

new agreements" (FCM, 2011, p. 7), I began my search there. The majority of BC's service agreements were specific service agreements for fire protection or waste collection, with a growing number of water and wastewater provisions. I was primarily focused on collecting comprehensive service agreements, as most urban reserves require a comprehensive list of services.

I accomplished this by mapping out the urban reserves across the country and then locating their associated agreements online. The most urban reserves in the country have been established in Saskatchewan, where 39 of the 51 reserves have been established through the TLE framework (Government of Saskatoon, 2016, p. 20). While the urban reserves in Saskatoon and Regina are some of the earlier examples of urban reserves in the country, they actually make up a small percentage of the total reserves, with six and three urban reserves respectively (Government of Saskatoon, 2016, p. 20). Small towns and rural municipalities, usually adjacent or near to the First Nation's main reserve, constitute the majority of urban reserves in Saskatchewan. Equipped with a list of the urban reserves in the province, I was able to search for the agreements online. For cities such as Regina and Saskatoon that had multiple urban reserves, of which comprehensive municipal service agreements have been signed, I found the agreements on their civic websites. For Regina, this included their agreements with the Piapot First Nation.

4.2.2 Phase II: Methods of Data Analysis

Equipped with the characteristics of an effective intergovernmental relationship identified in the first phase of the research, I conducted a content analysis of protocol and services agreements to provide insights into which characteristics were favored and which were left out. Furthermore,

how these broad characteristics were translated into agreement language within the intergovernmental agreements was fundamental to this research. As outlined below, beyond identifying the key characteristics through manifest analysis, intergovernmental agreements underwent latent analysis to determine if there was recognition of these characteristics by means of exploring several analogous themes consistent with the First Nation-local government relations. The data emerging from these analyses were organized and determined whether they met a threshold of importance, as defined by this research.

The first level of content analysis was to determine the characteristics identified in the first phase of the research through a manifest content analysis of the agreements. Using NVivo software, I searched the surface content of each document to see if there was any recognition of the four characteristics determined in the first phase, including: 1) "understanding difference"; 2) "government-to-government relationship"; 3) "legally binding"; and 4) "relationship building". This level of the analysis revealed which texts included these key terms, and how regularly they were identified. Key terms such as 'difference', for example, would therefore include 'differ', 'differently', and 'differs'. While not analyzing the context that they were in, these flagged terms were assessed in the context of the text to ensure that it followed the intended meaning of the word. However, as the service agreements were written in legal syntax, there was not always an explicit instance of the characteristic.

In instances where the indicator terms did not arise, the coding software enabled me to code sections and agreements as a whole for characteristics beyond the terms. This practice of latent content analysis seeks to probe beyond the surface information to reveal underlying information.

As many of the characteristics related to the processes, or to higher-order characteristics beyond the terms of the agreement, it was important to consider these agreements in greater detail. How these agreements recognized the characteristics identified by the interview participants was considered in this phrase. With the characteristic of 'government-to-government,' for example, beyond simply identifying the term I coded each agreement to delineate if First Nations government was identified, and if so, how it was positioned in relation to the local government. How were Aboriginal rights and title identified and upheld? Did the agreement make reference to original treaties, or to Section 35 of the *Constitution Act, 1982*? Based on these two levels of analysis, the codes from each agreement or sections of an agreement could be produced easily and further analyzed.

The literature review (*see* Chapter Three) facilitated the development of a framework for the analysis and evaluation of the intergovernmental agreements to recognize and support the theory and practice of reconciliation. The framework was especially useful since many of the intergovernmental agreements identified in this research were written before the term 'reconciliation' was popularized by the Truth and Reconciliation Commission (2015). The framework is used to consider reconciliation through the elements of decolonizing urban environments, achieving self-determination, and building relationships based on mutual respect. This analytical framework is rooted in the literature in an attempt to connect the findings of this research to the larger discussion on reconciliation among academics, politicians, and practitioners. Although this framework seeks to resonate with the process of reconciliation and intergovernmental agreements, there are many other connections that could be made. The main goal of these elements of the framework is to identify elements of intergovernmental agreements

that policy-makers and practitioners can work to reconfigure and challenge the way these relationships are enshrined in textual agreements.

4.2.5 Ethics

Research Ethics Board approval for Research with Human Participants was obtained through the University of Manitoba such that it closely followed Chapter Nine of the *Tri-Council Policy Statement* addressing ethical practices for research involving First Nations, Inuit and Metis Peoples of Canada. I reached out to a Manitoba First Nations organization in the early phases of my research and had several conversations with one if its members about the research. As part of the *Indigenous Studio* course that I had taken at the University of Manitoba, I had the opportunity to work with a Manitoban First Nation in the first semester of the 2016/2017 year. We fostered a close relationship and over the course of the semester had several discussions about intergovernmental agreements. These discussions, along with many other conversations with practitioners and leaders among Manitoba's First Nations, created the foundation for this research.

4.3 Biases and Limitations

While I have tried to be mindful of the biases which could weaken my research, there are a few points I must draw attention to. Firstly, my experience with Indigenous issues and histories is in its infancy. This research, as well as many aspects of my career and education, seeks to advance my understanding in this area. I have approached this research with careful consideration and above all as an ally to Indigenous peoples. Throughout the research I have been mindful of what

Stake (1995) refers to as propositional generalization - my own interpretations and claims of the patterns and theories. These generalizations are explicated, arising in my search for the meaning behind themes or categories that arise. While I have been fortunate enough to have worked with several First Nations in the past, both professionally and through my education at the University of Manitoba, I am cautious of how propositional generalizations could inform my approach in this research. This required ongoing reflection of my biases at every stage of the research. By relying on data collected through practitioners and the feedback from my committee I am hopeful that I have addressed gaps in my research.

The research methods employed in the practicum used the practice of triangulation to improve the reliability of my findings (Creswell, 2009, p. 213). By combining different research methods, I was able to validate their individual findings and integrate different forms of data in the analysis. The analytical framework described above sought to minimize the biases or presumptions that I held by using interview data and supplementary documents to inform the content analysis. It was my hope that triangulation would ensure both the validity of the findings and steps that I took to reach them. However, this method was not without its limitations. It is possible that the participants that I interviewed offered a biased opinion of intergovernmental agreements, and the characteristics they identified were imbued with this bias. By interviewing two practitioners from each area of employment, excluding the federal government, I attempted to minimize the risk of this occurring.

5.0 Characteristics of Successful Intergovernmental Agreements

This section provides a synthesis of practitioner perspectives and best practice guides to determine the characteristics of a successful intergovernmental agreement between a First Nation and local government. Key characteristics that interview participants identified include establishing a government-to-government relationship, understanding differences between First Nations and local governments, ensuring that the agreements are legally binding, and fostering a relationship in writing. These characteristics refer to the content of actual agreements and relate to the broader intergovernmental relationship between the First Nation and local government. There were many similarities amongst the characteristics identified by Indigenous and non-Indigenous participants with respect to the relationship characteristics that guide intergovernmental agreements. Conversely, there were fundamental differences between characteristics raised by local government employees and Crown employees. Working at the interface between First Nations and municipal governments, the land-use planning consultants offered a unique prospective; as neither a government or First Nation employee, the consultants were able to identify differences between First Nations and local governments, both in their approach to intergovernmental agreements and the characteristics that they uphold. By virtue of their experience with the agreements, practitioners from municipal and First Nations governments provided on-the-ground insights into the agreement-making process, and the key characteristics that inform it.

5.1 Building a Government-to-Government Relationship

As outlined in this section, achieving a government-to-government relationship between First Nations and local governments was identified as a key characteristic for relationship building amongst interview participants. While many participants considered it to be but one aspect of the relationship, for others it was essential. Within the government-to-government relationship, the level of government where First Nations were positioned varied across the interviews. While Jasper and Ben ("municipal employees") considered First Nations to be akin to a municipal government, Josh and Jordan ("First Nation employees") insisted that they were their own nation on the same terms as the Government of Canada. Furthermore, negative effects that this term might have on the success of an intergovernmental agreement and the development of the urban reserve, such as public backlash, was raised by Nick. As discussed in greater detail below, this perception is refuted by reports by the Federation of Canadian Municipalities (2015) and Fiscal Realities Economists (2014) which frame government-to-government relationships as fostering improved capacity and economic prosperity for both parties.

Josh, who is involved in a First Nation's Treaty Land Entitlement (TLE) agreement, notes that a strong relationship between a First Nation and local government stems from a municipality "truly understanding the treaty relationship that First Nations have with Canada" (personal communication, 2017). Local governments need to be willing to "understand that First Nations are their own level of government and have their own jurisdictions" ("Josh", personal communication, 2017). Giles, an Elder working with the Treaty Land Entitlement Commission of Manitoba, noted from the outset of the interview that First Nations are not interested in

positioning themselves as a municipal government. By positioning themselves as a municipality, Giles says, First Nations are limiting their authority. Jordan, a member of a Manitoba First Nation, shared Giles' position. When a First Nation makes an agreement with a municipality, Jordan said, it must come from the same position that a municipality would make with a foreign government. Josh notes, however, that there is a tendency among local governments to work with First Nations like they are a "developer or resident or citizen of their municipality" (personal communication, 2017).

Speaking from her experience as a planning consultant, Tegan acknowledged the danger of First Nations approaching the relationship with a local government as anything other than a government. Echoing Josh's comment, Tegan says that the "minute the First Nation is treated as a developer and not as a government the [negotiation] is finished" (personal communication, March 17, 2017). She adds that "often times across Canada you'll see that First Nations will just, for probably a matter of convenience, just offer up control of land use and development to a municipality" ("Tegan", personal communication, March 17, 2017). If the First Nation gives up this control to the local government, Tegan says, "they are subject to the same zoning, same development rules, same approval processes" that they would treat any other property owner (personal communication, March 17, 2017). Each of the urban planning consultants' positions on government-to-government relationships were aligned, noting it was an indisputable fact that First Nations were governments unto themselves.

Speaking from her position as private consultant, Tegan notes that navigating this relationship is "the key for [her firm] and all of the things [they] do is to really work at the fundamentals with

the First Nation and the municipality to understand that it is a government-to-government relationship" (personal communication, March 17, 2017). Tegan's approach is to start any conversation about the opportunities for land use and developed collaboratively as opposed to the local government having overarching control over it. If the First Nation is positioned simply as a stakeholder, a voice among many, they lose authority. Furthermore, if they enter the discussion too late, the First Nation may be disadvantaged in shaping the relationship. "It's the starting point for everything," Tegan says, "because if there's an understanding of jurisdictional autonomy then everything percolates out from that" (personal communication, March 17, 2017). She notes that she has started to see more of a push for mutual understanding of jurisdictional autonomy taken up in the services agreements across Canada.

Conversely, Ben, the city manager of a Manitoban municipality, describes the First Nation his community had a servicing agreement with as a government that "would be treated no different than the rural municipality or any other municipality that [they] deal with" (personal communication, 2017). While Ben acknowledges and respects the adjacent First Nations' government and democratic process, he says that "at the end of the day," agreements between the two "shouldn't be differentiated between whether it is between a First Nation or local government" (personal communication, 2017). Ben adds:

> Just to say that because it's a First Nation agreement you should have different terms for something similar that could be applicable to a local government… I don't think that's appropriate. (personal communication, 2017)

The terms Ben refers to are the conditions of the agreements between First Nations and local governments and the fees they would pay for services. These terms comprise the expectations of

the local government and First Nations, and typically reflect the quality, quantity, or standard of service provide. His approach is opposed in 'Pathways to Service Delivery' (2015), a guidebook written by Urban Systems for First Nations negotiating or renegotiating the terms of service agreements. The guide notes that many services are eligible for government funding, which subsidize the overall costs. Additionally, "up-front capital costs of new infrastructure should not be included in a service agreement" (Urban Systems, 2015, p. 43). In 'Pathway to Service Delivery', Urban Systems reflects upon government-to-government relationships as "critical to achieving success in identifying and realizing a common vision between neighbouring municipalities" (2015, p. 53). By viewing services agreements as municipal-to-municipal, Ben's perspective is reductive and does not account for the appropriate opportunities available.

The second municipal employee, Jasper, had a slightly different outlook on First Nations establishing urban reserves. First Nations, he said, are like "any business or rate payer or any other municipality" and should be treated no differently ("Jasper", personal communication, 2017). These perspectives uphold the paternalistic approach of colonial policies and undermine First Nations' position as the original peoples of Canada and as self-determining peoples. By positioning the neighbouring First Nation community as a local government, their Treaty and constitutional rights are neither recognized nor respected (TRC, 2015). Furthermore, this perspective creates barriers in the pathway to support the federal government in rebuilding the nation-to-nation relationship they have with First Nations. In the opening message of the Federation of Canadian Municipalities' (FCM) 'Pathway to Reconciliation', this commitment is captured as a "new direction" for the mayors and municipal leaders (n.d., p. 1).

Nick, from his perspective with the Province, considered language around government-to-government a "political debate that could go on forever" (personal communication, 2017). It is more important, he said, to focus on the fundamental relationship formed between Chief and Council and the Mayor and Council. If this relationship isn't established the development of an urban reserve cannot occur. He notes:

> I don't want to say that's rhetoric, just rhetoric, because its important political rhetoric. But at the end of the day if you want to generate wealth out of the property, does it matter if you go after it as a government-to-government relationship, as opposed to a developer-investor relationship? I don't know. ("Nick", personal conversation, 2017)

Nick adds that "because a lot of people don't understand [government-to-government]... it adds a layer of risk" (personal communication, 2017). What Nick has seen across Manitoba is a push by First Nations to create urban reserves purely for economic reasons – to add jobs to their community and generate revenue. Nick argues that by bringing in the 'rhetoric' around government-to-government to the MDSA negotiations, it carries with it a level of uncertainty and risk that could threaten the development. While risk is something that many of the other interview participants have spoken about, Nick is the only interview participant to attach it to a government-to-government relationship. A lack of understanding surrounding government-to-government agreements, Nick says, leads to these feelings of uncertainty.

Despite Nick's comments, recognition of First Nation self-determination is a fundamental aspect of many toolkits and guidelines for service delivery and relationship building across Canada. In the Project Overview of the 'Land Management Project', produced by the Federation of Canadian Municipalities (FCM), a government-to-government relationship leads to "improved

capacity and economic prosperity for the entire community" (FCM, n.d., p. 4). The document recognizes that "First Nations and municipalities represent different orders of government and, although many of their responsibilities to their community members are similar, they operate under separate legislation and with different jurisdiction" (FCM, n.d., p. 4). While these differences can "complicate cooperation on local services," if dealt with in a transparent manner, FCM does not consider it to constrain "communities' ability to enter into service agreements" (n.d., p. 4). In fact, an effective government-to-government relationship between a First Nation and local government will help clarify areas of jurisdiction and promote a cooperative approach to land management (FCM, n.d., p. 4).

5.2 Understanding Differences Between First Nations and Local Governments

Understanding the differences between Indigenous and non-Indigenous governments and recognizing how they do things differently was a key characteristic identified by the interview participants. An appreciation of the unique financial capacities, human resources, and funding streams that each has, Jordan said, was critically lacking among local governments. Jordan noted that the difference between First Nations and local governments was inherently a difference in approach – another way of getting to, or reaching, an analogous goal. Provincial guides from BC, Alberta, Saskatchewan, and Ontario support this perspective and emphasize the importance of understanding differences of culture and governance structures between communities and the ways that they can unite. Conversely, Ben maintains that First Nations are the same as municipal governments and should be treated accordingly. This section addresses why this perspective is indefensible in light of the theory and practice of reconciliation outlined in Chapter Three.

Early in the interview, Jordan stated that recognition of the differences between First Nation and municipalities was fundamental to relationship building. Once you take the time to recognize the differences, Jordan said, "then you can say 'look, these differences are really a difference in approach'" (personal communication, 2017). Jordan gave the example of taxation to illustrate this point, saying that while each community may seek to put in place a system of sharing costs amongst their community, the word 'tax' has a negative connotation among Indigenous communities. Therefore, if a First Nation did put something similar to taxation in place, they would not call it a tax. This example speaks to the power that language can have. It is important that local governments recognize these nuances and understand the importance that language holds. While at the end of the day they may both seek to accomplish the same goals, Jordan said, the ways in which they approach it will fundamentally be different.

Conversely, Ben spoke about the similarities between local governments and First Nations. Reflecting on the agreements created between them, Ben says that they are "built in the same fashion, no different than with another local government" (personal communication, 2017). Ben does offer that, in navigating the relationship with First Nation communities, there are different values which underpin each of the communities. How First Nations conduct business and run their community, he notes, is different from the operation of his own local government. However, Ben adds, "at the end of the day, beyond that, it's really no different than any other municipal or local government" (personal communication, 2017). Through the lens of truth and reconciliation, Ben's statement is inattentive to the sources of government authority within Indigenous government structures. By positioning First Nations as no different than a non-Indigenous

community, cultural differences are lost and the relationship between the two will be weaker (FCM, n.d.).

In 'Establishing Municipal-Aboriginal Relationships', Book Four of *Building Capacity Through Communication*, 'difference' is identified in a section titled 'Challenges in Working Together' (FCM, n.d.). The report notes that in developing a partnership between a First Nation and local government, an awareness of each other's perspectives, backgrounds, culture and values are important for developing relationships based on mutual understanding, trust and respect. For example, First Nations place a strong emphasis on oral tradition as a means of passing cultural knowledge onto future generations, while non-Indigenous people often rely on written documents or pictures to document knowledge or events. The report adds that:

> Differences in culture, values and beliefs can cause misunderstandings within a community. It is important to promote information-sharing within the community to dispel myths and rumours that may impede a potential relationship between a First Nation and municipal government. (FCM, n.d., p. 8)

Reports out of BC, Alberta, Saskatchewan, and Ontario express the importance of educating oneself about the differences and similarities in government models and governance practices (FCM, n.d.). These reports outline the differing governing systems between governments in an attempt to help prevent problems arising from ignorance or misunderstanding. In the Government of Ontario's *Case Studies* report, 'Municipal-Aboriginal Relationships', it is noted that "engaging Aboriginal communities is different from engagement with others" (Government of Ontario, 2015, p. 2). In the overall lessons learned from the report, it is states that "understanding differences is important – Aboriginal communities are not municipalities or stakeholders" (Government of Ontario, 2015, p. 11).

5.3 Establishing Agreements That are Legally Binding

Each of the interview participants reflected on the legally-binding nature of service and protocol agreements as a critical element for the development of a successful relationship between First Nations and local governments. For some of the interviewees, creating legal agreements was the primarily purpose behind building a relationship, while for others it was but one element. Furthermore, what interview participants considered the legal element of the service agreements to accomplish ranged from bridging election cycles, securing confidence in developers, and holding each government accountable. These terms arose intermittently across the supporting documents, holding different value and meaning among them. How this characteristic supports the journey of reconciliation is considered throughout this section.

Matt ("planner") and Ethan ("INAC employee") each spoke about the capacity for legal agreements to strengthen certainty between local governments, First Nations, and the development community. While a relationship may change and adapt, Matt said, a legal agreement signed in perpetuity is something that creates a sense of certainty that the services agreed upon – and the payment for them – will be delivered. This, in turn, builds confidence among the neighboring communities and confronts a fear that the urban reserve will become blighted (Walker & Belanger, 2013). By holding both parties accountable through an agreement that could be upheld in court, Ethan and Matt said, it would attract business and developers. Similarly, Ethan noted that the legal component of the agreements could assure the development community that the services required would be paid for and that they will be delivered (personal

communication, 2017). As a legally binding agreement, any issue that may arise "can quickly be remedied through the courts if necessary" ("Ethan", personal communication, 2017).

Built into these legal agreements, Ethan says, must be recognition of what the needs of the community are and capacity to respond to them should they change. For example, for an urban reserve with a small development that only requires certain services expands in five years, "the agreement needs to be such that it can evolve to support that" ("Ethan", personal communication, 2017). By limiting the development potential of an urban reserve through the services provided, it constrains their ability to control their land. Agreements must include language that speaks to development planning so that services can accommodate any expansion. Ethan notes that "it would be a problem… if you suddenly put in development on land that had not been planned for, when it is hooked up to the water pipes, and maybe it is a water intensive industry, and it starts to exceed the capacity of the towns water system" (personal communication, 2017). This is an opportunity for the two communities to meet regularly and exchange information.

The Federation of Canadian Municipality's 'Service Agreement Toolkit' (2011) notes that in some cases parties will request to have a service agreement for a finite period of time for this reason. If it is anticipated that the terms of the agreement will need to be renegotiated regularly, the parties may decide to have a short term agreement, with five years as a reasonably short term for an agreement (FCM, 2011). Furthermore, the renegotiation of services brings the two parties together often, which is important given the differing election cycles of each community. That the legal agreements bridge the short Band election cycles was an important aspect for many of the interview participants. By signing the agreement for a fixed term, the agreement can "flow

through the election cycle" ("Ethan", personal communication, 2017). For some First Nations with two-year election cycles, long-term plans for the development of the urban reserve could mean that there is turnover of Chief and Council by the time the plan is complete. A change in administration can sometimes change the focus of priorities for a community and it may take time to develop a new working relationship (FCM, 2011). Ben noted that in the agreement between his municipality and the neighbouring First Nation, there is language around quarterly meetings for the two parties to renegotiate terms of the agreement. He acknowledged that these meetings represented an important opportunity for the two governments to sit down at the same table and engage on a range of topics.

5.4 Creating a Relationship in Writing

A protocol agreement**,** memorandum of understanding (MOU), or an accord was identified by many of the interview participants as an important tool to achieve the goals held by First Nations and local governments. Relationship documents are described by Ethan, a senior INAC employee, as a 'different animal' than their legal counterparts. This characterization is reflected in the many guides and toolkits available to the two parties that promote the importance of relationship documents as meeting many of the jurisdictional issues and challenges that emerge from intergovernmental agreements. MOUs trigger the possibility for partnerships and enforce existing efforts to bridge the Indigenous and non-Indigenous communities through communication and cooperation (Alberta Municipal Affairs (AMA), 2002, p. 18). They are instrumental in providing guiding principles for an effective relationship between a First Nation and local government, the creation of partnership agreements is recommendation of this research.

The relationship document is one of two things that Ethan says is an issue for many intergovernmental agreements – the legal agreements being the other. Relationship documents, Ethan says, are "integral to how these political bodies work together" on a day to day basis (personal communication, 2017). A relationship document lays out the terms for how often the two parties will meet and discuss joint agendas and try to work together to solve problems. Unlike a legal document that spans election cycles, Ethan believes that because there is potentially a new Chief and Council every two or three years, these agreements "need to be renewed every time there is an election" (personal communication, 2017). For the potentially incoming Chief and Council, the understandings established by the outgoing administration needs to be reestablished. Having the new leadership continue the same commitments as the previous one is not a realistic expectation, Ethan says. Just as a new relationship will need to be made between the new Chief and Council and the local government, the goals and priorities might also need to be adjusted. This principal extends beyond First Nation election cycles and includes a municipalities election cycle, where election promises made inform the relationship between the two communities. In Ethan's experience working for INAC, he focused on developing community accords that could be renewed after every election (personal communication, 2017).

Matt ("planner") noted that service and protocol agreements do not constitute the basis for relationship building. While several of the interview participants did recognize that it got the two parties together occasionally, in their current form it was agreed that they were a strictly legal document. And while Matt doesn't see an inherent problem with the agreements, he contends that these service agreements don't do enough to build a relationship. Tegan adds that the legal

agreements can be the 'jumping off point' for the relationship between the two communities. She continues: "the key is that to make sure that the First Nation and the municipality over time can continue to have a good solid relationship around that" ("Tegan", March 17, 2017). In this sense, services are an opportunity for the communities to come together. These regular meetings hold incredible potential for the two parties' journey toward reconciliation.

How these agreements are created, and importantly who they are written by, was a topic of discussion among several of the interview participants. For Ben, the city manager, it all boils down to who is involved in the process. In Ben's own words, "there is a level of interaction between First Nation local government that unless you have the right people in place, you may not have the same type of relationship" (personal communication, 2017). Ben identifies as the 'right person' with his local government, adding that "as long as [he] is working there… the City will be supportive" of the relationship they have with the urban reserve community (personal communication, 2017). Jasper, the other municipal employee, adds that it all comes down to the "people that are involved and the ethics they have" (personal communication, 2017).

Josh revealed that while his band was negotiating a services agreement, he had drafted a MOU and proposed it to the local government. Josh "got back from the city was they thought 'let's just move on with the service, we don't need this document'" (personal communication, 2017). The local government said that they were "sold already on the idea of urban reserves" and that they just wanted to "move on with the service" agreement ("Josh", personal communication, 2017). Ultimately, the MOU was abandoned because it was considered unnecessary by the local government. This anecdote reveals the gaps in understanding that the local government has

regarding the purpose and potential of relationship documents. It also shows the ways in which a local government can assert itself over a First Nation by dismissing their request.

A MOU is identified as a 'formal agreement' in the 2002 *Report Concerning Relations Between Local Governments and First Nation Governments* by the Alberta Municipal Affairs (AMA). One example the report points to is the MOU between the Regional Municipality of Wood Buffalo (RMWB) in Alberta and the Athabasca Tribal Council representing five First Nations governments within the boundaries of RMWB. The report notes that "while the MOU may not be perfect," it fosters an improved relationship through better communication and understanding (AMA, 2002, p. 18). The MOU supplements the protocol agreement that the parties have in place, which the report describes as "brief and general in nature" (AMA, 2002, p. 18). MOUs also usefully accompany the creation of Joint Relations Committees, as in the case of Elliot Lake and Serpent River First Nations. The MOU recapitulates the need for collaboration between the two communities and highlights the shared principle that "replacing an ad-hoc relationship with a formal joint relations committee will increase economic opportunities" in the area (Government of Ontario, 2002, p. 9).

On April 13, 2017, the Treaty Land Entitlement Committee (TLEC) of Manitoba, the Treaty Relations Commission of Manitoba (TRCM) and the Association of Manitoba Municipalities (AMM) released the 'Treaty Land Entitlement Toolkit', aimed at "fostering relationships between municipalities and First Nation communities." The Toolkit emerged out of a working relationship between the different association, in an attempt to "establish and maintain a mutually beneficial partnership aimed at enhancing the knowledge of First Nations and

Canadians within Manitoba regarding the significance of the Treaties, Treaty Land Entitlement (TLE) and the Treaty relationship" (2017, p. 3). The toolkit includes a template of a Community Accord between a First Nation government and municipal government pursuing a TLE claim in an urban area. Many of the sections of the agreement speak to the characteristics outlined in this chapter, including government-to-government, and recognition of differences.

5.5 Summary

This qualitative research has determined four key characteristics essential to the creation of a successful intergovernmental agreement at the local level. The characteristics of government-to-government relations, understanding differences, legally-binding agreements, and relationship documents were determined through participants and guiding documents. Grounded in the day-to-day practice of relationship building, these characteristics reveal the division of knowledge and opinion between policy-makers, practitioners, and planning consultants. While there was consensus among the interview participants that these characteristics were integral, the interpretation of these characteristics differed. How these characteristics are reflected in intergovernmental agreements collected from across the country is explored in the following chapter.

6.0 Content Analysis of Intergovernmental Agreements

This chapter critically evaluates twenty-one intergovernmental agreements between First Nations and local governments across Canada to determine the extent to which the characteristics identified by the interview participants, and supported by guiding documents, are incorporated. This chapter is divided into two parts in an effort to capture the results of service agreements and protocol agreements analyzed in this research. And while the observations made by interview participants pertained primarily to the planning context in Manitoba, this chapter presents the findings of an analysis of intergovernmental agreements from across Canada.

6.1 Services Agreements

Eleven services agreements, including four from British Columbia, six from Saskatchewan, and one from Manitoba, were analyzed to determine how the characteristics identified by the interview participants are reflected in practice. The individual services agreements differed greatly with respect to content and terms provided, and the degree to which they identify characteristics relating to reconciliation. Overall, the agreements were rigid legal documents that laid out terms and conditions for services that the local government would provide. While the characteristic of government-to-government relationships is evident in many of the agreements, recognition of Aboriginal rights and title is scarcely identified in these agreements. Differences between First Nations and local governments are denied in many service agreements, and few provide opportunities to enhance the signees' understanding. As a formal agreement, the characteristic of legally-binding is implicit, while the characteristic of relationship-building is often denied. The findings of this analysis are outlined below.

6.1.1 Building a Government-to-Government Relationship

Among the service agreements identified in this research, recognition that the agreements represent a government-to-government relationship varied both in spirit and in content. While only three of the services agreements note government-to-government relationships within the language of the document, recognition of First Nation's governance structures is clearly present in each. How First Nation governments are framed within the terms of the agreement, however, is often unclear. Among the eleven agreements there is no reference to Section 35 of the *Constitution Act, 1982* or treaties between First Nations and the Government of Canada. As outlined below, many of the agreements reflect the problematic perspective espoused by Jordan and Ben (municipal employees): First Nations are akin to a neighbouring local government. This perspective denies Aboriginal rights and title and serves to undermine First Nation agreements signed with the Crown.

The *Reserve Service Agreement* (2005) between the Tsleil'waututh Nation and the District of North Vancouver, BC, acknowledges the "spirit of good government-to-government relations" in all new developments, both on and off the reserve (p. 1). In the 'New Development' subsection, government-to-government is articulated as a system whereby each party informs the other of developments that may affect the reserve in any way. The Tsleil'waututh Nation is expected to inform the District of any planned developments on the reserve and provide information on the planned development. Likewise, the District is also expected to provide information of any planned developments which may affect the "District Reserve Infrastructure, the Reserve Infrastructure, or planned developments on the Reserve of which it is aware" (2005, p. 6). The

Reserve Service Agreement (2005) closely reflects section 475(2) of BC's *Local Government Act*, wherein local governments must provide opportunities for "the board of the regional district, the council of any municipality, or First Nations adjacent" to be the affected by the development of an official community plan. As the only reference to First Nations in the *Local Government Act*, it is possible that the inclusion of government-to-government principles in *Reserve Service Agreement* (2005) is an extension of the *Act* itself. If this is the case, the agreement-making process is guided by provincial policy that positions First Nations among neighbouring government.

The *Local Services Agreement* (2007) between the Westbank First Nation and the Regional District of Central Okanagan stipulates that a representative of the First Nation Council can attend the District's Board meetings as a non-voting member. The agreement adds that when "a meeting of the District Board is in camera, the representative of the First Nation Council may attend at the invitation of the District Board" (2007, p. 3). While this representation of First Nation Council in the District's Board does promote inclusion of Indigenous voice, it is unclear whether they attend as a stakeholder or as sovereign government. As identified in Chapter Three, this term fails to recognize and account for First Nations' unique standing in Canada as an sovereign nation and perpetuates the history of colonialism. Among the service agreements analyzed, *Local Services Agreement* (2007) is the only agreement that includes wording around non-voting membership in council.

Both the *Agreement* (2007) between the Regional District of East Kooteney and ?Akisq'nuk First Nation and the *Municipal Services Agreement* (2001) between the Kahkewistahaw First Nation

and the City of Yorkton recognize the respective First Nations' governance structures. This is accomplished in each agreement by acknowledging their powers under *The Indian Act* to pass and amend laws. In the *Municipal Services Agreement* (2001), "it is acknowledged by the City that the Band has exclusive jurisdiction to enact laws pertaining to the Lands" (p. 5). Further, in the *Agreement* (2007), the ?Akisq'nuck First Nation is recognized as having enacted a Property Taxation Bylaw which enables the First Nation to collect taxes from its band members living on the reserve. The inclusion of background information on *The Indian Act* suggests that the agreement made between the two governments is made with the understanding that First Nations operate under a different governance structure than local governments. The authority to create by-laws is not handed down to them by the province, but instead something that flows from them.

By positioning First Nation and municipal governance structures as equal, with shared land-use planning responsibilities, the agreement establishes a balanced relationship between the signees. However, that the agreements seek to produce a 'government-to-government' relationship in the same way that they would with a neighbouring municipality relates back to the concerns raised by many of the interview participants (personal communication, 2017). The overall effect 'fixes' Indigenous peoples and governments and constrains the nation-to-nation relationship First Nations have with the Canadian government (Porter & Barry, 2014). Porter and Barry (2014) note that this desire for the settler state to constrain Aboriginal rights and title stems from "the desire for order, certainty and fixity in western legal system" (p. 37). What constitutes as recognition, they add, is seriously affected by legal systems and agreements (2014). Reconciliation efforts in Canada, which seek to rebuild the nation-to-nation relationship with First Nations, are not supported by this position as a local government.

Across each of the service agreements, there is no recognition made between local governments' historic or ongoing injustices toward First Nations' traditional territories or Aboriginal rights and title. Omitted from these agreements is recognition that urban environments in Canada exist the way they do today because of First Nations' often forceful removal from their land. A simple reference to the Royal Commission on Aboriginal Peoples (1996) or the more recent Truth and Reconciliation Commission (2015) would have supplemented this omission. In terms of acknowledging the desires of many First Nations to achieve autonomy, there is no recognition of their inherent right to self-determination in any of the service agreements. Whether a service agreement is an appropriate place for this language, however, is debated both by interview participants as well as supporting documents (*see* Chapter Five).

6.1.2 Understanding Differences Between First Nations and Local Governments

Differences between First Nations and the local governments were infrequently articulated across services agreements analyzed in this research. While many agreements recognized shared values and goals held by the two governments, very little recognition of the differences between them or their communities was identified. Instead, many of the intergovernmental agreements analyzed drew comparisons between First Nations and non-Indigenous governments parties. Given that the underlying premise of the agreements is to establish a consistent level and form of service provision, these comparisons ensure that residents receive the same standard of service. While a consistently in service provision was generally agreed among the interview participants as positive, the consistency in land use, zoning, and regulation of land is more complicated. While it might be a good thing in terms of attracting investment and providing certainty to

developers, it seemingly forecloses First Nations' ability to "do things differently" ('Matt', personal communication, 2017).

Comparisons are made between the City of Regina and the Piapot First Nation in the *Service Agreement* (2007). The agreement notes that Piapot First Nation will "ensure that, at all times, the occupation, use, development and improvement of the Land is essentially the same as the occupation, use, development and improvement of the Land" that would have been allowed had the land not been a reserve (p. 3). This clause is justification that, since the reserve is similarly zoned to the City of Regina, it will receive the same level of service that is received in the service provider's community. These terms are reflected in the 2007 *Agreement* between the Regional District of East Kooteny and ?Akisq'nuk First Nation, wherein "the same level and on the same schedules and time frames and of the same level and quality" is provided to the reserves as provided to Regional District of East Kootenay (p. 2). These clauses confront equity issues by making sure that infrastructure on urban reserves receive the same standard of water that the city does. This relates to the issue raised by Matt that the of level of service and what infrastructure it can support attracts investment and support from the neighbouring community. As noted in Chapter Four, the underlying purpose of the service agreements is the constant and fair exchange of fees for service.

However, the indicator of enhanced engagement between First Nations and local governments is upheld by each of the agreements to varying degrees. Since the service agreements necessitate the two parties to meet occasionally to renegotiate the terms of the agreement, there is an opportunity for the communication between the local government and First Nation that might

otherwise have not existed. While the intention of these meetings is identified across the service agreements as pertaining primarily to the negotiation of services (see *Service Agreement* (2008) between the Village of Lebret and Starblanket Cree Nation), there is an argument to be made that the simple interactions made between the two communities may spur dialogue and conversation in other areas. The *Municipal Services Agreement* (2001) between the City of Yorkton and Kahkewistahaw First Nation acknowledges that in order to successfully fulfil their respective mandates, "it is essential that they work together in a spirit of co-operation, and maintain an open and ongoing dialogue with respect to their various inter-relationships" (p. 7). This service agreement reflects some of the content included in many of the protocol agreements, outlined below.

6.1.3 Establishing Services Agreements that are Legally Binding

Written in the vernacular and in the format of a legal contract, services agreements are inherently legally-binding agreements. These agreements, which are typically signed between the Mayor and Council and the Chief and Council, represent a commitment to fulfill the terms outlined within them. However, identified in the content analysis, the services provided, as well as the timeframe of the agreements, varied across the service agreements. As identified by Matt, the legally-binding nature of service agreements is important because it bridges election cycles and maintains relationships with incoming administration. However, identified in the service agreements below, the opportunity for signees to renegotiate terms is unevenly articulated.

The *Service Agreement* (2008) between Starblanket First Nation and the Lebret Village set out a four-year agreement without the opportunity for renegotiation. The agreement "shall be binding

upon and ensure to the benefit of the parties hereto, their successors and assigns" (p. 3). While the rigid terms of the agreement are intended to bridge election cycles, it does not accommodate the potential to expand should the development require more services. This is reflected in many of the services agreements, wherein there are clear terms which bind the parties to the terms over the period of the agreement. Primarily, this is common for agreements pertaining to a single service, such as sewage and garbage disposal (Village of Lebret & Starblanket Cree Nation) or water (City of Meadow Lake & Flying Dust First Nation) to restrict renegotiation of the service within the term of the agreement. These terms were limited to four and three years, respectively. The parties have the option to renew the agreements, by "giving notice in writing to the other of its intention to renew three months prior to the expiration hereof, and so on from time to time in perpetuity" (Flying Dust First Nation, 2011, p. 2). It is articulated in the service agreement between the Village of Lebret and Starblanket Cree Nation that this is done "in the interests of saving time and costs" (2009, p. 3).

In contrast, several of the comprehensive service agreements stipulate that the First Nations have the opportunity to renegotiate the terms of the agreement before the end of the agreement. The *Local Services Agreement* (2007) between Westbank First Nation and Regional District of Central Okanagan, for example, mandates that the parties meet at least once a year during the term of the agreement to review the service provided under it. Perhaps because the agreement is for a comprehensive suite of services for an established development, there is greater flexibility in terms of opportunities to renegotiate the terms. As noted in the previous section, these formal interactions may provide the basis for enhanced appreciation and understanding of the other government.

6.1.4 Creating a Relationship in Writing

There were conflicting opinions among the interview participants that services agreements provided a viable pathway for First Nations and local governments to foster a stronger relationship. While many of the interview participants stated that the agreements represented simply the terms of services, which was reflected by the supporting document, many of the services agreements revealed opportunities for relationship-building. Discussed below, the conflicting opinions identified in the first phase of research was reflected in the second phase of research as well.

The *Service Agreement* (2007) between the Regional District of East Kootenay (RDKO) and ?Akisq'nuk First Nation, for example, outwardly denies any formal relationship stemming from the agreement. The agreement stipulates that "the parties acknowledge that this Agreement is not intended to create an agency relationship, joint venture or partnership of any kind between the parties or as imposing on any of the parties any partnership duty, obligation or liability to any other party or to any other person" (2006, p. 6). The content of the agreement supports this aim, in that it does not include anything outside of the terms of the agreement. Conversely, the *Municipal Development and Services Agreement (MDSA)* signed between the Long Plain First Nation and the City of Winnipeg recognizes that "the parties wish to establish a long-term relationship of practical cooperation which respects the First Nation's jurisdiction, which also recognizes the need for ongoing compatibility and coordination between the parties" (2010, p. 2). These two service agreements represent the variation among content pertaining to relationship-building. The content analysis of ten agreements reveals that the decision to promote

relationship-building within the agreement is on a case-by-case basis. However, there are several inferences that emerged from this analysis. Primarily, the analysis revealed that agreements are consistent with the comments made by the interview participants: services agreements are purely legal documents.

Two agreements with the City of Regina (*Services and Compatibility Agreement* (2007); *Policy Services Agreement* (2007)) contain commitments towards establishing a relationship between the parties. In the 'introduction' section of *Municipal Services and Compatibility Agreement* (2007) signed between the Piapot First Nation and the City of Regina, the agreements states that "the parties wish to establish a long-term relationship of practical cooperation which respects Piapot's jurisdiction" (p. 2). Further, the agreement recognizes "the need for ongoing compatibility and coordination between the parties, particularly as to land use, building and fire standards, public health and safety, and business regulation, because of the close proximity of the Land to other lands and businesses within the City of Regina" (2007, p. 2). The *Policy Services Agreement* (2007) signed between the Regina Board of Police Commissioner and Star Blanket Cree Nation lay out similar terms, stating in the 'Introduction' that the "purpose and intent of this Agreement is to address the issues which are specific to providing police services to the Land, and to ensure a harmonious working relationship between the parties" (p. 2). That each of the agreements was with the City of Regina and written in the same year signifies knowledge sharing within the city. It is very possible that the agreements, written with similar terms, were produced by the same people, or in pursuit of similar aims.

6.2 Protocol Agreements

Protocol agreements, identified in Chapter Four, were analyzed to determine to what extent the characteristics identified in the previous chapter are reflected. Primarily, the purpose of many of these relationship agreements is to establish working groups that will regularly meet to explore and initiate activities designed to facilitate economic diversification, to protect cultural and heritage resources, to promote community growth, to increase investment, and to generate employment. These documents celebrate the relationship between the two communities and comprise of the aspirations that their partnership may hold. They establish avenues of discussion and meaningful approaches to resolve disputes. The characteristics identified by the interview participants were meaningfully reflected in many of these agreements. Outlined below, the ways in which government-to-government relationships are formed, differences are understood, and relationships can be established are meaningful pathways toward reconciliation in these agreements.

6.2.1 Building a Government-to-Government Relationship

The latent analysis of government-to-government relationships within protocol agreements determined that the majority of the agreements position First Nations as governments, and in many cases, at the level of the Government of Canada. Discussed below, many of the agreements use the term 'government-to-government' to call attention to the production of a relationship built on mutual respect and cooperation. However, not all of the agreements explicitly use the term. Protocol agreements were analyzed to determine the ways in which First Nations were framed within the agreement as a commitment to partnership, cooperation and an appreciation of

First Nation governance structures. While the agreements between Regional District of Fraser-Fort George and the Lheidli T'enneh First Nation, as well as Thompson's *Aboriginal Accord* (2008) draw attention to these intentions, the *Protocol Agreement* (2004) between Tla'amin First Nation and the Corporation of the District of Powell River provides tangible steps to how the two parties can work together.

Aspirations for a government-to-government relationship is explicit in three of the relationship agreements analyzed. In the *Memorandum of Understanding* (2005) entered into by the City of Nanaimo and the Snuneymuxw First Nation, the parties "wish to establish a government-to-government relationship of mutual respect and cooperation" (p. 1). This is reflected elsewhere in the document, wherein the City and Snyneymuxw note the mutual respect they have for each of their mandates, policies and areas of jurisdiction. The content of the *MOU* (2002) between the Regional District of Fraser-Fort George and the Lheidli T'enneh First Nation identifies "intergovernmental relationships" as a shared interest of the parties, "including those between First Nations and local governments, before and after treaties are signed" (p. 1). The Federation of Canadian Municipalities (2015) notes that these commitments may be seen as symbolic, but they are a not necessarily 'lip service' (p. 1).

The *Protocol Agreement* (2004) between Tla'amin First Nation and the Corporation of the District of Powell River represents a commitment to address the needs of growing Indigenous populations by strengthening government-to-government relationships. The agreement expressly identifies its commitment to a government-to-government relationship, wherein the parties of the agreements are committed to "building government-to-government relations now rather than

await the outcome of treaty negotiations" (p. 2). Within the terms of the *Agreement*, this is articulated in 'Article 6 – Intergovernmental Coordination', whereby six 'government-to-government meetings' are held each year to review the progress of initiatives in the protocol agreement, identify joint initiative opportunities, share information and improve communications (2004, p. 2). Furthermore, the agreement stipulates that the Mayor of the Municipality and the Chief Councillor of Tla'amin will alternate as chair of the government-to-government meetings. This clause is an indication that the two governments are committed to sharing power in a tangible way that shares power does not position one government over the other.

The *Protocol Agreement* (2005) between the City of Nanaimo and Snuneymuxw First Nation, to more limited extent, recognizes the intent of the parties to establish a government-to-government relationship. And while the *Protocol Agreement* (2004) between Xwemalhkwu First Nation and the Regional District of Comox-Strathcona does not identify the characteristic government-to-government relationship directly, it establishes in the 'whereas' subsection that both parties have powers, rights and obligations to act in the best interest of their constituents. The Xwemalhkwu First Nation is recognized as an Indian Act Band, with a duly elected Chief and Council, federally recognized under the *Indian Act* (2004). That the agreements are signed between the respective leaders of the First Nation and local government, the agreement is understood as being between governments. This agreement represents a critical first step for the development of collaborative and communicative policies that can better improve policy for non-Indigenous peoples and Indigenous peoples alike.

While overall very few of the agreements consider tangible steps toward achieving urban policy that is co-produced by First Nation and local governments, there are a few examples. The *Memorandum of Understanding on Cooperation and Communication* (2002) between the Regional District of Fraser-Fort George and the Lheidli T'enneh First Nation speaks to the "economic development, natural resource management, efficient and affordable service delivery and cooperative land use planning" between the two governments (p. 1). In particular, the MOU represents a commitment to the cooperative intergovernmental relationships between the First Nation and local government, which the document notes, builds effective communication and trust. Likewise, Thomspons' *Aboriginal Accord* (2008) is intended to lay the foundation for agreements and action plans in partnership with Aboriginal governments and peoples. The *Accord* repeatedly refers to Aboriginal governance, and recognizes "the various levels of Aboriginal governments", and one of the central pursuits of the accord is to demonstrate "how municipal and Aboriginal governments can work together" (2009, p. 1).

6.2.2 Understanding Differences Between First Nations and Local Governments

Among the protocol agreements analyzed, differences between the First Nation and local government is unevenly articulated within the terms, subsections and general within the ten agreements. While the majority of the agreements contain a measured amount of language surrounding the differences between the First Nation and local government signees to the document, several of the documents themselves are limited in terms of content. Differences, and the commitment to understanding them, is identified within the analysis through significant and

meaningful commitments made to develop a mutual understanding among individuals and institutions.

Differences between First Nations and local governments is articulated in several of these agreements through the identification of each party's individual mandates, policies and areas of jurisdiction. For example, the first of three general objectives of the *MOU* (2002) between the Lheidli T'enneh First Nation and the Regional District of Fraser-Fort George is to "promote understanding of the interests of First Nations and local governments in a province-wide context, including participation in each other's events whenever appropriate" (p. 1). The *Protocol Respecting a Regional Accord* (2004), signed between the Regional District of Comox-Strathcona and the Xw'emalhkwu First Nation, loosely recognize differences between the two parties. In the subsection, 'Mutual Understanding', "the parties recognize that a long-term relationship committed to ongoing and regular communication will be a relationship that leads to mutual understanding and respect" (p. 2). The *Protocol* represents an opportunity for the parties to get to know each other better and foster, if not already present, 'mutual understanding and respect' of differences between First Nations and local governments. Therefore, stronger relations will lead to plans, policies, and decisions that reflect these important differences between communities. Despite their apparent differences, the protocol agreement recognizes that "cooperation on issues of mutual interest is advantageous as cooperation builds community and regional strengths" (2004, p. 2). However, differences between Regional District of Comox-Strathcona and the Xw'emalhkwu First Nation, either in terms of culture or governance, is unarticulated in the *Accord*.

Across the protocol agreement, there was varying recognition of the key differences between First Nations and local governments, such as treaties, rights and traditional territories. The *Protocol Respecting a Regional Accord* (2004) between Xwemalhkwu First Nation and the Regional District of Comox-Strathcona had perhaps the most comprehensive reflection of the indicators for differences. In the Preamble of the *Protocol* recognizes the

> Xwémalhkwu First Nation has occupied its traditional territory for thousands of years and continues to assert Aboriginal Title and Rights in and to its traditional territory; the Xwémalhkwu First Nation is also an Indian Act Band, named the Homalco Indian Band, with a duly elected Chief and Council, federally recognized under the Indian Act; the Regional District of Comox-Strathcona recognizes Aboriginal rights and title, including the inherent right to self-government, as affirmed in the Constitution of Canada; the Regional District of Comox-Strathcona endorses the resolution and reconciliation of Xwémalhkwu Aboriginal Title and Rights interests through the negotiation of a Treaty and through working with local and regional governments; both Parties have powers, rights and obligations to act in the best interests of their constituents; (deliver governance for each set of their constituent interests) and the leadership of the Parties wish to enhance the working relationship between the Parties by signing a Protocol (p. 1)

In effect, the protocol agreement recognizes several of the elements of reconciliation laid out in the literature review, such as articulation of Aboriginal rights and title and inherent right to self-government. Moreover, it endorses a resolution and reconciliation of Aboriginal rights and title. While the other protocol agreements do not recognize reconciliation to this extent, the agreements provide a tangible pathway toward building and maintaining respective relationships. As identified above, many of the agreements seek to provide a step toward enhancing communication between the First Nation and local government signees. By encouraging interactions between the two parties, these agreements provide a mandate for both First Nations and local governments to pursue a tangible component of reconciliation.

With the exception of the *Protocol Respecting a Regional Accord* (2004), beyond recognizing the differences between First Nations and local governments, the relationship agreements do not seek to present an understanding of it. Instead, the agreements provide the first step towards developing the understanding. This observation is consistent with the reflection by Brandon Ingles [pseudonym] in Koch's research (2016), wherein the planning consultant believes that relationship building work is taking place primarily at the political level, with municipal planning staff's role in the processes remaining unclear.

6.2.3 Establishing Protocol Agreements that are Legally Binding

As outlined in Chapter Four, while the protocol documents analyzed for this research are formal agreements, they are not necessarily intended to be legally binding. Although they are signed by the respective leadership of the local government and First Nation, the purpose is largely symbolic. Unlike the service agreements analyzed earlier in the chapter, where important services such as water and waste must continue uninterrupted, protocol agreements deal with intangible aims, such as honesty, respect, and trust. These points, with reference to the agreements analyzed, are discussed below.

Although many of the relationship agreements are signed between the leaders of each community and laid out in a format akin to the services agreements, they are not legally binding documents. The signatures are considered to be more of a symbolic gesture that commits each community to the goals and objectives laid out in the agreement. Absent from these relationship documents – that is included in services agreements – are terms around arbitration that bind the parties to fulfilling the agreement. Any critique of the legally binding nature of protocol

agreement must be considerate of the fact that although they represent commitment by either party, they are generally unenforceable. Written in terms that invite exploration and innovation, the agreements do not constitute the same as service agreements.

The majority of the protocol agreements, therefore, reflect very little on the legally binding nature of the agreement. This point is grounded in the fact that unlike the service agreements, none of the protocol contain a subsection on 'arbitration'. One agreement, the *Protocol Agreement on Culture, Heritage and Economic Development* (2004) between Tla'amin First Nation and Powell River, potentially the most comprehensive relationship agreement in this analysis, includes a section on 'Dispute Resolution'. The spirit and intent of this section is not concerned with the terms of the agreement, but instead with general interactions between the two parties.

Unlike the service agreements, the protocol agreements analyzed in this research are intended to be renewed after a limited period of time, renewed by incoming administration. In the *Protocol Respecting a Regional Accord* (2004) between Xwemalhkwu First Nation and the Regional District of Comox-Strathcona, the agreement is for a term of three years, upon which the parties will "review the effectiveness of the Protocol" (p. 3). Although it is not stated in the agreement, this is likely a strategic decision to review the terms of the agreement after each election cycle. The terms of the *Protocol Agreement* (2004) between the Tla'amin First Nation and the Corporation of the District of Powell River recognize that the agreement is a "living document and may be subject to revision from time to time by mutual consent" (p. 5).

While the protocol agreements are signed between the two parties, they are not bound to the terms within them. This is explicit in the *Cultural Collaboration Agreement* between the City of Markham and Eabametoong First Nation. The *Agreement* states that:

> No party has the power of authority to legally bind any other Party and nothing herein contained shall be construed as authorizing any Party to act as an agent or representative of any other Party… Nothing in this Cultural Collaboration Agreement shall be construed to create or constitute a legally binding obligation of the Parties. (2017, n.d.)

Ultimately, while the formal agreements are written and signed between the leaders of the two governments, they are not intended to be legally binding. Perhaps in part because protocol agreements are not legally binding, they could be more flexible to inclusive terminology and ambitious terms, with repsect to reconciliation.

6.2.4 Creating a Relationship in Writing

There was a significant and integrated recognition of relationship aspirations in the protocol agreements analyzed. Latent content analysis of the protocol agreements identified language surrounding 'friendship' and 'collaboration', as well as opportunities for the two parties to develop a relationship. Many of these documents self-identify as a critical component to relationship building between First Nations and local governments. Based on the latent content analysis of the protocol agreements, outlined below, these agreements represent a concerted effort by the parties to establish and maintain a successful relationship.

In the *Protocol Respecting a Regional Accord* (2004), the parties recognize that in signing the agreement, "the leadership of the Parties wish to enhance the working relationship between the

Parties" (p. 1). Unlike the service agreement, which was concerned with the delivery of services, these Protocol agreements relate to relationships between the two parties. A similar *Memorandum of Understanding on Cooperation and Communication* (2002) was signed between the Lheidli T'enneh First Nation and the City of Prince George the same year. The MOU between the two parties seeks to establish:

> The successful and timely conclusion of treaties is acknowledged to be of mutual benefit and respect for each other's mandates, policies and jurisdiction is stressed. Collaborative action in the development and implementation of projects of mutual interest is a central principle of the MOU and communication around relationship building, economic development, natural resource management, service delivery and land use planning is noted as a mutual objective. The promotion of effective methods of dispute resolution is encouraged.

The central principle of the MOU takes up many of the characteristics highlighted by the participants, including mutual interest, service delivery and effective dispute resolution. The *MOU* (2003) reached between the Regional Municipality of Wood Buffalo and the Athabasca Tribal Council also embodies many of the characteristics outlined by the interview participants. The MOU paved the way for the two parties to develop many other agreements, such as fire protection service and maintenance services. By focusing on capacity building, as a result of the MOU, partnerships have brought employment opportunities and increased revenues to the entire community. These MOUs, and many others like them, seek to capture the essence of the intergovernmental agreement and promote relationship building.

While the MOU between the Regional District of Fraser-Fort George and the Lheidli T'enneh First Nation represents a commitment by each party to pursue objectives consistent with a good neighbour relationship, it does not identify any of the elements of reconciliation. The MOU is

primarily focused on relationship elements, as discussed above, which serve to strengthen to way the two communities communicate. The *Cultural Collaboration Agreement* (2017), signed between the City of Markham and the Eabamatoong First Nation is the most recent relationship document considered for this analysis, and the only one which recognizes the term 'reconciliation'. Perhaps because this document was drafted since the release of the TRC's Final Report (2015), the term 'reconciliation' has been used. However, beyond the use of the term, the elements of reconciliation established in Chapter Three are not present.

6.3 Summary

Chapter Five addressed the first research question through a synthesis of interview data, guiding document, and the theory and practice of reconciliation. This chapter has attempted to provide an analysis of services and protocol agreements to determine how the characteristics identified by the interview participants are reflected in practice. Together, these chapters have explored the relationship practices that are employed across Canada and the relative limitations of the approach in Manitoba. This analysis reveals the steps that can be taken to promote the spirit of reconciliation as First Nation and local governments create new agreements and renegotiate old ones, which this discussion turns to below.

7.0 Discussion

The aim of this research has been to develop a greater understanding of First Nation-local government agreements in the province of Manitoba, Canada and to consider their relative capacity to support reconciliation. Although the two phases of research differ with respect to scope and structure, they each work to answer the research questions presented in Chapter One. The practicum was structured in phases to provide a critical analysis of characteristics in the province of Manitoba and then provide broader insights into the content of intergovernmental agreements from across Canada. Thus, the practicum was intended to both be critical of the current planning context in Manitoba and forward-thinking of how it could be restructured. Together, these two phases have revealed opportunities in the province of Manitoba to promote reconciliation efforts. This chapter provides a summary of the key findings from the previous two chapters, discusses the relationship between them with respect to the Manitoba context, and presents lessons that support future intergovernmental agreement-making.

7.1 Key Findings

The aim of the first phase of this research was to determine an overall baseline for relationship-building between First Nations and local governments in Manitoba. Nine interviews were conducted with policy-makers, practitioners, and planners knowledgeable of intergovernmental agreements to determine characteristics essential to relationship-building. In total, four characteristics were considered to be significant. How these characteristics were reflected – or rejected – in intergovernmental agreements was considered in the second phase of research. Together, these phases of research highlighted significant factors for successful protocol and

services agreements signed between First Nations and local governments. This section seeks to capture the key findings from this research, especially as they relate to the planning practice in Manitoba.

Findings from the two phases of research reveal that the characteristics for a successful intergovernmental relationship are unevenly articulated in protocol and services agreements. There were, however, inferences to be made between and among the two types of agreements analyzed. While services agreements tended to be rigid, legal documents that invite little attention to the relationship between the two parties, the protocol agreements provided a greater articulation of the relationship between the two governments and established steps to be taken to strengthen it at the community level. In contrast to the services agreements analyzed in this research, several protocol agreements recognized Aboriginal and treaty rights, as well as past Crown-First Nation relationships. Moreover, the protocol agreements established ways forward for the parties to work cooperatively into the future. There is less concern about these agreements being perfect, as they can always be updated later on. Partly because of this flexibility, protocol agreements can be as specific, or as wide reaching as the First Nation and local government desire.

There was general consensus among interview participants that services agreements themselves are not appropriate vessels for relationship principles. However, the notion that services agreements should only contain terms and conditions for services was unclear in the content analysis of these agreements. While some of the agreements included principals that related to government-to-government relationships and broader reconciliation issues, these issues are often

much more fully explored in the protocol agreements. As a legally binding agreement, the recognition of these reconciliation principles is outside the scope of their primary purpose, which is to create a process for providing and paying for service. This is not to say that protocol agreements are not important. Across the intergovernmental agreements analyzed in this research, the service agreements provided the strongest foundation to uphold the terms of the agreement in court. They provide a means of continuing service provision, bridging election cycles, and instilling confidence in developers that the reserve will receive a high quality of services.

Reflecting on the guiding documents analyzed in Chapter Five, it is apparent that policy-makers and practitioners are struggling with how to position First Nations solidly in the negotiation of services. Many of these services agreements, which are essential to the development of urban reserves, continue to promote the narrative that First Nations are a neighbouring municipality. While Nelles and Alcantara (2016) make a case for mandatory agreements, such as servicing agreements, less formal agreements such as protocol agreements represent an important pathway to toward reconciliation. These documents help to satisfy a lack of understanding through partnerships and cooperative agreements. In Manitoba, where urban reserves are beginning to gain momentum, these lessons are especially pertinent to policy-makers, planning consultants and practitioners navigating the interface between First Nations and local governments. By returning to the status quo where local governments have complete control over lands within their geographic boundary, the establishment of urban reserves are at risk of being delayed or deterred.

For Matt ("planning consultant"), Jordan ("First Nation TLE employee"), and Nick ("provincial government"), the relative limitations of First Nations and local governments is often overlooked and the relationship between the two has suffered as a result. Findings from the interviews suggest that while First Nation practitioners actively seek out guides and resources to pursue relationship-building, municipal employees receive very little direction in ways to establish successful intergovernmental agreements (Koch, 2016). The lack of understanding between First Nations and local governments speaks to the heart of the challenges faced in developing intergovernmental agreements. This challenge extends to services agreements where the differences between First Nations and local governments are minimized or ignored. Developing an understanding of the differences, as raised by many of the interview participants, was essential. If parties to a services agreement do not have this baseline information and understanding, the terms that they create will likely reflect the dominant system of power.

7.2 Lessons for Municipal Involvement in Manitoba

The development of urban lands has been identified as a tangible pathway toward reconciliation (Koch, 2016). This practicum examined protocol and services agreements to determine how they support this process. Based on this analysis, the characteristics identified by policy-makers and practitioners in Manitoba are not evenly represented in intergovernmental agreements found across Canada. Fundamentally, there was a lack of understanding amongst some participants as to how intergovernmental agreements could take up the spirit of reconciliation. This lack of understanding, particularly in the municipal employees, coupled with a lack of clarify from

provincial guiding documents, diminishes elements of reconciliation in intergovernmental agreements.

In light of calls for greater understanding among interview participants, a lesson emerging from this research is that relationship agreements must be pursued before a services agreement is negotiated. Before any legally-binding agreements are signed, Matt says, "you should know who you are dealing with… and understand the needs and requirements" of that community (personal communication, March 28, 2017). Achieving a baseline of information about the wants and needs of both communities and thoughtful consideration of how they align should be satisfied is essential. As well, the communities that each government represent should be included in this process. By involving each community before a services agreement is signed, it would avoid public resistance from misunderstanding and NIMBY-ism. By 'taking stock' of how far the relationship has to go, the negotiation of the services scope become clearer. While it is not possible to know everything about the other community, just as it may not be possible to know everything about one's own community, initiating a dialogue between the two communities ensures that when a question comes up there is already a culture of positive and regular communication in place.

Concerning the planning environment in Manitoba, this research contributes to the efforts of reconciliation in a number of ways. Primarily, for policy-makers, practitioners, and planning consultants working at the interface between First Nations and local governments, the insights this practicum offers on the characteristics important to the relationship-building may be especially useful. For those professionals already working at this interface, it may provide useful

insights from across Canada. The different agreements negotiated between parties pursuant of urban reserves may highlight productive language and opportunities to incorporate key characteristics. For those people new to the process, the relations at the local level and overview of the history and policy context, both in Manitoba and across the country, may broaden ones understanding of these concepts. Second, given that no two First Nation or local government is exactly alike, and the relationships between them are unique, each party needs to understand the basic practices and principles which guide successful relationship building. Through an analysis of protocol and services agreements, with respect to the four characteristics, this research has sought to assist more positive understanding. By analyzing protocol and services agreements, this research determined that protocol agreements are a necessary first step toward creating and sustaining an intergovernmental relationship

To a limited extent, this practicum also may provide a small contribution to planning theory. Primarily, this research highlights the hierarchy that remains embedded within planning relations between Indigenous and non-Indigenous governments. The assertion by the municipal employees that First Nations were equal to a neighbouring municipality serves to highlight that local planning practice retains colonial attitudes. That the majority of services agreements analyzed in the second phase of this research reflected this viewpoint through similarities drawn between First Nations and neighbouring municipalities suggests that these viewpoints are prevalent across Canada.

In Manitoba, the *Services Agreement* (2010) between Long Plain First Nation and the City of Winnipeg reveal that there is still a long way to go toward developing strong relationships at the

local level. Agreements must not enforce the status quo of pre-existing planning policies and approaches, as this forecloses opportunities for working with differences. The final contribution that this practicum holds towards intergovernmental relationship building in Manitoba is the lesson that a dependence on the status quo will lead to rigid agreements without space for effective relationship building. This lesson draws on the agreements developed between Piapot First Nation and the City of Regina, which function similarly to the *Services Agreement* (2010). While practitioners need to be reflective of past practices, they must also be innovative in seeking new approaches that subvert conflicts and encourage mutual respect. Local governments and First Nations alike need to constantly confront policy and practice that provide guidance to agreement-making processes and consider the pathways to reconciliation that they provide.

8.0 Conclusion & Direction for Future Research

The purpose of this research was to examine how the characteristics of successful intergovernmental agreements, as defined by relevant practitioners and policy-makers, are reflected in existing agreements between First Nations and local governments across Canada. Specifically, this research examined protocol and services agreements to interpret how they reflect the characteristics and considers what pathways toward truth and reconciliation these agreements promote. To help guide my analysis of these intergovernmental agreements, I have conducted semi-structured interviews with policy-makers, practitioners, and planning consultants familiar with these agreements to identify what they believe to be effective characteristics that support cooperative intergovernmental planning relationships. The opinions expressed in the interviews have informed a content analysis of intergovernmental agreements from across Canada in the pursuit of identifying characteristics that support pathways toward truth and reconciliation between First Nations and local governments.

This research has sought to answer the following questions:

1. What are the characteristics of a successful intergovernmental agreement between a First Nation and local government? How do these characteristics align, or misalign, with the theory and practice of reconciliation?
2. How, and to what degree, are these characteristics reflected in existing intergovernmental agreements across Canada? Which characteristics are recognized? Which are left out?
3. What lessons for municipal involvement in the processes of reconciliation, particularly in Manitoba, arise out of this research?

This chapter will revisit these research questions and summarize the major findings for each. It will then consider how this research might provide practitioners and policy-makers with additional insights into the relationship building process and reveal some of the incongruences in the approach taken by the Indigenous and non-Indigenous governments. Finally, this chapter will outline directions for future research.

The first set of research questions ask: What are the characteristics of a successful intergovernmental agreement between a First Nation and local government? How do these characteristics align, or misalign, with the theory and practice of reconciliation? This question revealed a multitude of responses from policy-makers and practitioners. Among the interview characteristics identified, four characteristics emerged: building a government-to-government relationship; developing an understanding of differences between parties; legally-binding relationships, and; relationship agreements. These characteristics reflect the appreciation or understanding of the need to create a services agreement, as well as the limitations that the agreement have in developing a strong relationship. However, they also reveal the discord among the different levels of governments – especially between First Nations and local governments.

For many of the participants, the characteristic of a government-to-government relationship was essential. And while recognition of First Nations as a government was common across all interview participants, the level of government that First Nations occupied varied across the interviews. Jasper and Ben, employees of local governments, considered First Nations to be analogous to a municipal government. Their approach in negotiating the terms of servicing

agreements with First Nations is no different, they said, then with a neighbouring municipality. However, Josh and Jordan, employees of First Nations, insisted that First Nations were their own nation, at the level of the Government of Canada. Concerning reconciliation, this characteristic is a commitment to establishing and maintaining respectful relationship. Critical to the process is the recognition of First Nations' legal rights. For governments, building a respectful relationship requires dismantling a culture of colonialism in which, all too often, policies and programs are still based on failed notions of assimilation. The assertion that First Nations are a municipality or a developer follows the narrative of the paternalistic colonial culture.

Developing an understanding of differences between Indigenous and non-Indigenous governments was a key characteristic identified by the interview participants. In building a relationship between the First Nations and local governments, interview participants noted that it is necessary to recognizing how they do things differently. Ultimately, an appreciation of the unique financial capacities, human resources, and funding streams that each has, was critically lacking. Provincial guides from BC, Alberta, Saskatchewan, and Ontario support this perspective and emphasize the importance of understanding differences of culture and governance structures between communities. By building knowledge between the two communities on ways that they differ provides the means of finding ways that they can unite. Reflecting back on the definition of reconciliation offered at the beginning of this research, reconciliation means to 'make friendly again' and does not necessitate that the two parties agree (Pløger, 2015, p. 108).

For the interview participants, forming agreements that are legally binding was critical to a successful intergovernmental relationship. For some of the interviewees, creating legal

agreements was the primarily purpose behind developing a relationship, while for others it was but one element. Furthermore, what the legal agreement accomplished varied across the interview participants. While some saw it as a means of bridging election cycles, others considered them to be necessary in securing confidence in the development community. Relationship components of intergovernmental agreements were identified by many of the interview participants as an important tool to achieve the various goals held by First Nations and local governments. Relationship characteristics lays out the terms for how often the two parties will meet and discuss joint agendas and try to work together to solve problems.

The second set of research questions ask: How, and to what degree, are these characteristics reflected in existing intergovernmental agreements across Canada? Which characteristics are recognized? Which are left out? These research questions were addressed through a latent and manifest analysis of twenty-one intergovernmental agreements from across Canada. Because of the variability of the agreements, they were assessed between protocol and services agreements. Generally, the protocol agreements upheld the characteristic of building relationships, while the service agreements took up the legally binding characteristic. While government-to-government relationships are recognized in many of the agreements, they are outwardly denied in other. The characteristic of understanding difference was positively identified in the protocol agreements through the opportunities it created to develop a greater understanding of the other party. In the service agreements, however, differences between the two governments were not recognized.

Among the agreements analyzed in Chapter Six, recognition of a government-to-government relationship between a First Nation and local government varied considerably. The protocol

agreements made concerted acknowledge government-to-government relationships. Both in spirit and in content, these agreements typically recognized First Nations inherent rights, and positioned them respectfully within the agreement. Among the services agreements analysed in this research, government-to-government relationships were not established.

The differences between First Nations and local governments was unevenly distributed across both sets of intergovernmental agreements analyzed in this research. While the two parties were identified or introduced in the service agreements, very little consideration was paid to the differences of First Nations' governance structures. Moreover, many of the agreements included language that served to collapse the differences between the two governments – perhaps in an effort to justify the cost of services provided. Many of the protocol agreements, however, proved to be an exception by acknowledging the differences between culture and governance structures. Furthermore, many of the protocol agreements promoted joint meetings and cooperation, as a possible means of establishing an interface between the two communities and thereby learning more about each other.

From the outset of the analysis, the services agreements were considered to be the legally binding component of the intergovernmental relationship between First Nations and local governments. However, amongst the eleven service agreements, there was considerable variation among the terms, sections and wording that defined the relationship between parties. The nature of the services agreements and the flexibility of the terms, with respect to their renegotiation, varied. While the agreements were written in legal language and, for the most part, did not include relationship principles, there were exceptions. However, several patterns did emerge

from the data. For example, while the specific service agreements did not allow for renegotiation over a fixed timeframe, the comprehensive agreements were typically open to renegotiation. While some service agreements were rigid documents, intended to bridge election cycles, others were considered to be 'living', open to adaptation and change.

The final characteristic identified in Chapter Five, 'establishing relationships in writing', emerged unevenly across the intergovernmental agreements. The MOUs and accords are essentially relationship documents, several of them included wording around reconciliation. The ways in which the characteristic was reflected in service agreements, however, varied. With a few exceptions, the majority of service agreements reviewed in this research make no reference to relationships. The *Service Agreement* between the Regional District of East Kootenay and ?Akisq'nuk First Nation, for example, outwardly denies any formal relationship stemming from the agreement. That these agreements outnumber the relationship or protocol agreements, there is a potential for these agreements to take up some of the goals and intents that they hold.

Overall, the characteristics that were identified in Chapter Five were unevenly reflected in the intergovernmental agreements assessed in Chapter Six. These characteristics, which the interview participants considered to be critical to relationship building between First Nations and local governments, were inconsistently articulated. In many agreements, these characteristics were not only ignored, but in some cases, denied: First Nations were reduced to stakeholders; opportunities for renegotiation were not included; and similarities were drawn instead of differences. The results are indicative of settler colonialism with respect to relationships between

First Nations and local governments and a failure in the Prairie provinces to come to terms with how policies and plans can effectively recognize and support Aboriginal rights and title.

The final research question asked: What lessons for municipal involvement in the processes of reconciliation, particularly in Manitoba, arise out of this research? Concerning the planning environment in Manitoba, this research contributes to the efforts of reconciliation in a number of ways. Primarily, for policy-makers, practitioners, and planning consultants working at the interface between First Nations and local governments, the insights this practicum offers on the characteristics important to the negotiation process may be especially useful. The development of protocol agreements, this research suggests, before proceeding with services agreements can establish a strong relationship between parties and ultimately a better negotiation of terms. The following section provides recommendations emerging from this research that reflect the lessons offered by this research.

8.1 Recommendations for Improving First Nation-Local Government Agreements

Reconciliation is not about arriving at a new relationship between Indigenous and non-Indigenous peoples, but instead returning to one. There needs to be recognition that as treaty people, both First Nations and non-First Nations have a responsibility to invoke changes to dominant society. The process of reconciliation will require substantial changes across Canada. With respect to urban planning, there must be a fundamental recognition that colonial practices, whether perceived or not, remain entrenched in the work that they do.

As a practicum, this research has sought from the very beginning to contribute to the planning field through the development of several key recommendations. Although the federal and provincial governments have recently taken steps to pursue the goals and aims of the TRC (2015), there has not been a proportional effort at the local level (Koch, 2016). Given the number of unfulfilled treaty land claims, coupled with an expanding urban Indigenous population, a focus on local agreements is particularly timely. Several of the interview participants expressed doubts in the current negotiation framework for the two parties to achieve fair and equitable services to urban reserves. Concerns were expressed that the very slow pace at which the establishment of urban reserves is proceeding may lead to even greater division among First Nations and the settler state. Below, this practicum provides three recommendations that promote planning policies that pursue changes within communities, organizations and individuals.

Enhance Understanding: Many of the interview participants expressed concerns that the employees of local government were not equipped with the requisite knowledge to engage First Nations in relationship building. Many had either not received a formal education about First Nations, nor had they received training on relationship building through their employment. The organizational support for local governments entering these agreements is not always enough. This could take place at the community or government level, or both. Engagement must be mindful not to include First Nations through tokenism, but instead through a respective and cooperative manner. A mutual understanding of each other's rights, history, governing authority and practices, and cultures is considered to sustain a productive relationship.

Require Relationship Document: Relationship documents, such as an MOU or accord, would serve to be a mandatory first step for communities pursuing urban reserve creation. The documents should establish community interests and areas that Indigenous and non-Indigenous government and community could come together. Based on the analysis, these agreements should ensure that First Nations and local governments address past injustices, build trust and understanding, and set a course for a successful partnership conscious of any potential limitations. These documents should be signed between each government's leadership. While it will provide a touchstone for incoming administrations, new governments should adapt the document to best reflect their aims.

Create New Policy Guidance: Despite the creation of provincial legislature intended to guide reconciliation efforts in the province of Manitoba, as well as guides and toolkits intended to support intergovernmental agreements at the local level, the research coming out of this practicum found that there was not a policy tailored to intergovernmental agreements. New policy, providing guidance on this should also be facilitated through training sessions for planners and municipal officials. The content of this policy and training should be determined by Indigenous organizations.

8.2 Direction for Future Research and Planning

Within the province of Manitoba, there has been growing momentum for policy and practice that recognize the potential for cities and municipalities to support relationships with First Nations establishing urban reserves. This work has sought to break through perceived barriers between First Nations and local government and determine pathways toward reconciliation in cities and

municipalities. The analysis and recommendations presented in this practicum are by no means a conclusion. This research has simply sought to broaden the understanding of reconciliation in cities and municipalities, especially in reference to intergovernmental agreements relating to urban reserve creation. Furthermore, the recommendations are intended only for the Manitoba context, and may be considered inappropriate for other provinces or inconsistent with their own planning policy.

Findings from this research attempted to shed light on how intergovernmental agreements recognize and support characteristics identified by policy-makers and practitioners in Manitoba. This research used a common approach to address the research problem through content analysis of intergovernmental agreements. The conclusions of this practicum point to a lack of understanding, specifically at the local level, as contributing to barriers between First Nations and local governments. Future research might usefully consider further analysis of policies in the province of Manitoba that recognize and support relationships with First Nations. Specifically, a critical analysis of Manitoba's *The Path to Reconciliation Act* might usefully be analyzed to highlight the province's current approach.

Future research may consider how the intergovernmental agreements identified in this research – protocol and services agreements – are implemented and function in practice. While this research has sought to shed some light on the agreements themselves, consideration of what steps lead to these agreements might have a deeply practical purpose. What are the timelines of these agreements, and how have they developed between election cycles? While the relationships

between First Nations and local governments are unique, these questions might usefully provide parties entering into agreements a point of reference.

One of the recommendations of this research was for protocol agreements to come before services agreements. And while a full examination of the relationship between services agreements and protocol agreements was outside of the scope of this research, future research might usefully analyze intergovernmental relationships that were initiated by protocol agreements, rather than services agreements. A case study analysis of a services agreements that were developed this way might reveal that the terms of the agreement are different, or that the time it took to negotiate the agreement was shorter. It may be proven that protocol agreements could reduce the time needed to negotiate services agreements, which could save valuable resources and time.

And while this research has pointed to protocol agreements as necessary documents in pursuit of reconciliation, what other 'first steps' lay the foundation for respectful relationships? This research should look beyond Canada to consider reconciliation efforts aboard. Outside of agreement making, alternative avenues toward building and maintaining an intergovernmental relationship exist. Cross-cultural workshops held early in the relationship-building process, for example, can provide opportunities to debunk prejudices and stereotypes, learn about each other's culture, and identify management style and administrative processes. Many of the interview participants noted that subtle recognition of Indigenous rights and title could have powerful effects on intergovernmental relationships. The practice of local governments

recognizing Indigenous territory at the introduction of speeches and special events may merit closer attention.

As Canadians work together to develop truth and reconciliation, planning may usefully provide a critical pathway. While critics point to the practice as maintaining hierarchical, colonialist structures, this research has sought to explore new context-sensitive planning practices that uphold the aspirations of Indigenous and non-Indigenous peoples. If planning is to support the reconciliation process in Canada, the practice must move past conflicts that inhibit space for difference. The relationship-building between First Nations and local governments signals the opportunity for planning to take up multiple perspectives and support a pathway toward reconciliation.

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Appendices

Appendix A: Interview Schedule

The purpose of this proposed research is to examine protocol and servicing agreements between Indigenous and adjacent local governments, and specifically, to consider best practices for intergovernmental agreements. The research is informed by and will be grounded in the theory and practice of Indigenous reconciliation. Given the significant policy implications of intergovernmental agreements, municipal government, Indigenous government and a number of federal and provincial departments have shown a strong interest in initiating and sustaining cooperative intergovernmental relations at the local level.

To help guide my analysis of protocol and servicing agreements, I am conducting interviews with policy actors and practitioners familiar with these agreements to ascertain what they believe to be effective characteristics to support cooperative intergovernmental planning relationships. The statement of informed consent attached with this email will provide you detailed information on the procedures, risks and benefits of participating in the study.

1. To begin, can you walk me through some of the aspects of your job related to First Nation-municipal relationships?
    a. What is your role?
    b. How do you work together?
    c. What proportion of the work you do is involved with relationships between First Nations and local governments?
2. What principles, guidelines, and other resources do you use to navigate interactions between a First Nation and local government?
    a. What operational practices exist?
    b. Can you provide any examples?
3. From your position at/with [insert name of organization], how would you define an effective agreement between a First Nation and local government?
    a. In an effective agreement, what are the desired outcomes?
    b. What could be done to improve existing agreements?
4. What are the necessary characteristics of a written agreement?
    a. Are there characteristics beyond the written agreement that you believe are important?
5. How does your organization define reconciliation?
    a. To the best of your knowledge, has that definition changed?
6. Does your organization have a mandate related to reconciliation?
    a. Is it being realized? If so, how?

Appendix B: Ethics Approval Certificate

UNIVERSITY OF MANITOBA | Research Ethics and Compliance

Human Ethics
208-194 Dafoe Road
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Phone +204-474-7122
Email: humanethics@umanitoba.ca

PROTOCOL APPROVAL

TO: **Adam Fiss** **(Advisor: Janice Barry)**
Principal Investigator

FROM: **Kevin Russell, Chair**
Joint-Faculty Research Ethics Board (JFREB)

[redacted]

Re: **Protocol J2017:007 (HS20545)**
"First Nation-Municipal Protocol and Servicing Agreements: A Pathway Towards Reconciliation"

Effective: February 24, 2017 **Expiry:** February 24, 2018

Joint-Faculty Research Ethics Board (JFREB) has reviewed and approved the above research. JFREB is constituted and operates in accordance with the current *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*.

This approval is subject to the following conditions:

1. Approval is granted only for the research and purposes described in the application.
2. Any modification to the research must be submitted to JFREB for approval before implementation.
3. Any deviations to the research or adverse events must be submitted to JFREB as soon as possible.
4. This approval is valid for one year only and a Renewal Request must be submitted and approved by the above expiry date.
5. A Study Closure form must be submitted to JFREB when the research is complete or terminated.
6. The University of Manitoba may request to review research documentation from this project to demonstrate compliance with this approved protocol and the University of Manitoba *Ethics of Research Involving Humans*.

Funded Protocols:
- **Please mail/e-mail a copy of this Approval, identifying the related UM Project Number, to the Research Grants Officer in ORS.**

Appendix C: Background Information and Consent Form



UNIVERSITY OF MANITOBA

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Statement of Informed Consent

Research Project Study: ***'First Nation-Municipal Protocol and Servicing Agreements: A Pathway Towards Reconciliation?'***

Principal Investigator: Adam Fiss, Graduate Student, Master of City Planning, Faculty of Architecture, University of Manitoba

Supervisor: Janice Barry, Assistant Professor, Department of City Planning, Faculty of Architecture, University of Manitoba

Introduction

You are invited to participate in a research interview. The purpose of this consent form, a copy of which you can keep for your own records, is intended to ensure you have consented willingly to participate in the research and with all necessary information. It should also explain the procedures involved in the research and the expectations from you as a participant.

Please read carefully, understand and review the consent form and information about the research. If you would like to know more details on any issues concerning your participation in the interview, please feel to ask me (the Principal Investigator).

Purpose of the study

The purpose of this proposed research is to examine protocol and servicing agreements between Indigenous and adjacent local governments, and specifically, to consider best practices for intergovernmental agreements. The research is informed by and will be grounded in the theory and practice of Indigenous reconciliation.

This research asks: How do policy actors define the characteristics of a successful intergovernmental relationship between a municipality and First Nation? How, and to what degree, are these characteristics reflected in existing intergovernmental agreements across Canada? What lessons for municipal involvement in Indigenous reconciliation, particularly in Manitoba, arise out of this research?

This project is my Major Degree Project, an essential requirement for the completion of the two-year Master of City Planning Program at the University of Manitoba.

Study procedures

As a participant in the study, you will be asked a series of questions related to your professional experience, knowledge of intergovernmental agreements between First Nations and local government and its potential impacts on each community. The anticipated time for the completion of the semi-structured interview is 60 minutes. An interview schedule comprising 6 major and related additional questions will be used to guide the discussion. You can refuse to answer any questions and to end the interview at any time. The interviews will be audio recoded and transcribed with your consent. You will have the opportunity to review your transcript prior to the publication of this project. You will have the opportunity to withdrawal from the research entirely before August 2017 by contacting either myself or my supervisor, Dr. Janice Barry.

Participant risks, benefits, costs

There are very limited risks associated with your participation in the research. However, to minimize the potential risk of your participation, information pertaining to your name will be withheld from the report and you will be assigned a pseudonym to conceal your identity. Information pertaining to your area of employment, including your job title or employer title, would be incredibly beneficial to the overall research. By outlining the area of employment in which you work, and at what scale, would provide important context to the research.

It is possible, given the small network of professionals working with these agreements, that a reader could work out your identity based on this information. If you are not comfortable revealing your job title or employer title, I will replace it with a generic descriptor of your area of employment. Ultimately, you will have final say over what the descriptor is. I will take various steps to minimize the risks of your participation, including providing you with the opportunity to review and edit the transcript. This opportunity to review your interview transcript will allow you to remove or modify any sensitive information. Furthermore, I will use my discretion to make sure that your comments are appropriate for the public domain.

As a participant, this research will give you an opportunity to share your knowledge and experience on intergovernmental relationships at the local level and what characteristics it benefits from. You will also be able to share your insights on characteristics that relate to the spirit of reconciliation in Canada. Your participation in the study has the potential to provide a framework to improve the intergovernmental capacity of First Nations and local governments, hence to contribute significantly to a progressive change.

Audiotaping & confidentiality

With your permission, the interviews will be audio recorded and then transcribed. Audio recording ensures the accuracy of the information shared. I will take notes if you have any reservations about interview being audio recorded. All the personal identifiers including your name, age, and gender will be removed within a day after the finalization of interview transcripts for content analysis. Pseudonyms will be used to explain any of your comments in the report. Additionally, and at your discretion, your job title or employer title will be replaced with a generic descriptor of the organization.

Feedback & debriefing

Upon completion of interview transcription, I will send you the interview transcripts via email. This will provide you an opportunity to verify the accuracy of the information shared during the interview, and to modify/remove any comments that you may feel as inappropriate for the public domain. You are asked to return comments of review within two weeks. Reminder emails will be sent out prior to the two-week deadline. I will provide you individual feedback within a week after getting the review comments to ensure the accuracy of the information compiled from the interview. Where revised transcripts are received, only these will be used for data analysis. If interested, I will provide you a copy of the final report upon the completion of this project.

Dissemination of results

I will disseminate the final thesis report as a hard copy at the University of Manitoba's Architecture/Fine Arts Library and in my oral defense. An electronic copy of the document will be uploaded in University of Manitoba's M Space following the project approval. I will also send a copy of the final report to the interested participants following the thesis defense via email or surface mail. The results from the study may be used by the principal researcher (Myself) to write conference papers/articles for publication.

Voluntary participation/Withdrawal from study

Your decision to take part in this study is completely voluntary. You have the right to refuse to answer certain questions or to withdraw your participation without explanations at any time during this study even after the interview is over. If you decide to discontinue your participation due to any reason, the information shared by you during the interview will not be used in the final report until it becomes impossible to exclude your data (e.g. when I submit my thesis to the Faculty of Graduate Studies).

Statement of consent

Your signature in this form indicates that you have carefully read and understood to your satisfaction the information regarding participation in this research project and willingly agree to participate as a subject. It does not waive your legal rights as a participant nor release the researchers, institutions and sponsors from their legal and professional responsibilities. You are free to withdraw from the study at any time and/or to refuse to answer certain questions that you are not comfortable with. Your continued participation should be as informed as your initial consent, so you should feel free to ask clarifications or new information throughout your participation in the study.

The University of Manitoba may look at your research records to see that the research is being done in a safe and proper way.

This research has been approved by the Joint-Faculty Research Ethics Board (JFREB). If you have any concerns or complaints on your participation in this study, you may contact any of the above named persons or the Human Ethics Coordinator (HEC) at 204-474-7122 or by e-mail at humanethics@umanitoba.ca. A copy of this consent form has been given to you to keep for your personal records and reference.

Please place a tick mark in the corresponding box if you have agreed to each of the following. In case you don't agree, please leave the box blank.

I have read and understood the information provided in this consent form. ( ) Yes ( ) No

I have had all my questions answered by the student researcher in the language that I understand. ( ) Yes ( ) No

I understand that my participation in the study is voluntary and have the right to discontinue from the study at any time. ( ) Yes ( ) No

I, _____ (print name), agree to participate in this study. ( ) Yes ( ) No

I agree to have my job title/employer attributed to my interview ( ) Yes ( ) No

I agree to have the interview audio-recorded and transcribed. ( ) Yes ( ) No

I agree to be contacted by phone or e-mail if further information is required after the interview ( ) Yes ( ) No

I agree to have the findings from this project published or presented in a manner that reveals only very basic information about my position (e.g. planner with the Manitoba government) ( ) Yes ( ) No

Do you wish to receive a summary of the findings? ( ) Yes ( ) No

How do you wish to receive the summary? ( ) E-mail ( ) Surface mail

Address: _____

Participant's Signature _____ Date _____

Researcher's Signature _____ Date _____

Appendix D: Letter of Introduction



UNIVERSITY OF MANITOBA

City Planning
201 Russell Building
84 Curry Place
Winnipeg, Manitoba
R3T 2N2
Tel: (204) 474-9458
Fax: (204) 474-7532

You are invited to participate in a semi-structured interview as part of my Master's Practicum Project on intergovernmental agreements between First Nations and municipal governments. The following information is intended to provide you with important background information on my Master of City Planning Practicum Project at the University of Manitoba. The project is being supervised by Dr. Janice Barry, Assistant Professor in the Department of City Planning.

The purpose of this proposed research is to examine protocol and servicing agreements between Indigenous and adjacent local governments, and specifically, to consider best practices for intergovernmental agreements. The research is informed by and will be grounded in the theory and practice of Indigenous reconciliation. Given the significant policy implications of intergovernmental agreements, municipal government, Indigenous government and a number of federal and provincial departments have shown a strong interest in initiating and sustaining cooperative intergovernmental relations at the local level.

To help guide my analysis of protocol and servicing agreements, I am conducting interviews with policy actors and practitioners familiar with these agreements to ascertain what they believe to be effective characteristics to support cooperative intergovernmental planning relationships.

This research has been approved by the Joint-Faculty Research Ethics Board (JFREB). If you have any concerns about the project, you may contact the Human Ethics Coordinator (HEC) at 204-474-7122 or e-mail: humanethics@umanitoba.ca.

Please feel free to contact me at ***** for more details. You may also contact my thesis Advisor Dr. Janice Barry at ***** for any clarifications on the study.