Discourse, Policy, or Leadership?
Urban Reserves and First Nation-Municipal Intergovernmental Relations

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Abstract

First Nations in Manitoba are converting urban land from municipal to reserve status through Treaty Land Entitlement (TLE) agreements. This process is cultivating new intergovernmental relationships between First Nations and municipalities. Conflicts at this local level have been identified as barriers to timely implementation of TLE agreements.

This capstone report assumes that commitments made by federal, provincial, and municipal government in Canada are genuine, and seeks to analyze the emerging First Nation-municipal interface for barriers and opportunities to support positive relationships. Through a secondary analysis of interview transcripts from senior-level policy actors in Manitoba TLE implementation and a review of the small body of literature concerning Indigenous-local intergovernmental relationships, this report:

1. Establishes a working theoretical model for investigating Indigenous-local intergovernmental relations, which posits that these relationships are shaped by discourse, policy, and leadership factors; and
2. Investigates how these factors are influencing First Nation-municipal relationships emerging in Manitoba as a result of urban TLE implementation.

Broadly, this report finds that barriers related to discourse, policy, and leadership factors are creating a scenario where piecemeal, zero-sum negotiation without shared understandings of jurisdiction or shared goals around regional development goals is pushing First Nations to make strategic concession which appear to minimize their self-governing authority. Some recent initiatives which have brought First Nations and municipalities together at regional or association-level tables are presented as positive examples for building positive intergovernmental relationships.
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1. Introduction

All levels of government in Canada have made substantial commitments to develop more positive relationships with Indigenous peoples (Fontaine, 2016, Manitoba Government, 2016). These commitments are often framed around the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission’s Calls to Action. Importantly for municipal planners, these commitments have also been made by the Federation of Canadian Municipalities (Federation of Canadian Municipalities, 2016) and the Canadian Institute of Planners (Canadian Institute of Planners, 2019).

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the UN Human Rights Council in 2007. The Declaration presents an international legal perspective of “the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures, and traditions, and to pursue their development in keeping with their own needs and aspirations” (United Nations, 2013). Although UNDRIP is not legally binding, UN Declarations “represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles” (United Nations, 2013). Importantly for planners, Article 32 of the Declaration states that “Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources” (United Nations, 2007, p. 11).

In 2016, the Canadian federal government became a full supporter of UNDRIP, without qualification (Fontaine, 2016). Additionally, at the time of writing, Bill C-262 is being debated in the Canadian senate, which would “require the federal government to ensure all laws are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples” (Stackelburg, 2019, March 26).

Carried out between 2008 and 2015, the Truth and Reconciliation Commission produced a report which details the impacts of the Canadian residential school system and lays out 94 actions to recognize and address the historic and ongoing legacy of colonialism. The final report and calls to action recognize “the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation” (Truth and Reconciliation Commission, 2015, p. 10) and call upon all levels of government in Canada to adopt and implement its principles.

In 2016, Manitoba became the first province to introduce legislation based on the recommendations of the Truth and Reconciliation Commission. The Path to Reconciliation Act affirms that “the Government of Manitoba is committed to reconciliation and will be guided by the calls to action of the Truth and Reconciliation Commission and the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples” (Manitoba Government, 2016). Acknowledging that it is not just the
federal or provincial governments who bear responsibilities in this area, the Act supports a strategy that "fosters the involvement of all sectors of society in the reconciliation process" (Manitoba Government, 2016). Municipal governments, and the professional planners they employ, are also making commitments to reconciliation with Indigenous peoples.

The Federation of Canadian Municipalities' Big City Mayors Caucus released *Pathways to Reconciliation* in 2016, which acknowledges that the Truth and Reconciliation Commission calls to action include responsibilities for local governments. The document provides positive examples of Indigenous-municipal collaboration and resources for politicians and municipal staff. Although Pathways mostly addresses social, cultural, and economic issues for Indigenous municipal residents, it also discusses urban reserve creation and joint economic development programming. The Federation of Canadian Municipalities has funded relationship-building programs and released educational toolkits meant to support First Nations and municipalities in joint economic development or shared service provision (Federation of Canadian Municipalities, 2011, 2015). In addition to this commitment on behalf of municipal elected officials, planners in Canada are working to ensure that their profession does not obstruct implementation of reconciliation in Canada.

The Canadian Institute of Planners (2019) published its *Policy on Planning Practice and Reconciliation*, which makes aspirational claims for the planning profession and articulates a vision "in which reconciliation is meaningfully embedded in planning practice in Canada and planners build relationships with Indigenous peoples based on mutual respect, trust, and dialogue" (p. 5). The document acknowledges that land use planning in Canada occurs on Indigenous land and that land use planning in Canada has historically had detrimental impacts on Indigenous communities (Canadian Institute of Planners, 2019). The CIP policy states that planners should support the implementation of UNDRIP and the TRC Calls to Action.

Call to Action no. 47 from the TRC Final Report, which calls upon all levels of government in Canada "to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands [...] and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts" (Truth and Reconciliation Commission of Canada, 2016, p. 5), suggests a comprehensive research program concerning settler planning policy in Canada, as well as the underlying discourses which frame these policies. This capstone report seeks to address that need for research, and is guided by a concern that interactions between municipal and First Nation planning interests are largely ungoverned by policy or legislation linked to the previously described commitments to reconciliation.
The following chapters investigate factors shaping First Nation-municipal planning relationships in Manitoba, which are emerging as urban land is converted to reserve through Treaty Land Entitlement settlement agreements. The following research questions directed the literature review and analysis of interview data:

1) What factors influence the emergence of First Nation-municipal relationships during urban reserve development?

2) What challenges and opportunities exist for supporting positive relationships between First Nation and municipalities around new urban reserves?

This report is organized in six chapters. The first is this introduction. Chapter Two provides a review of the political and legal landscape of urban Treaty Land Entitlement implementation in Manitoba. Chapter Three is a literature review which looks at discourse, policy, and leadership factors that influence Indigenous-municipal relationships. Chapter Four discusses the methods used for data collection and analysis. Chapter Five presents the factors that appear to be shaping the emergence of First Nation-municipal relationships during urban reserve creation in southern Manitoba, as well as challenges and opportunities identified for each factor. Chapter Six provides a discussion of the ways in which various streams of the academic literature are reflected in the findings of this project.
2. Context

Between 1871 and 1910, the Canadian government made Treaties with the Indigenous peoples living in what is now Manitoba. This project focuses on a specific unfulfilled Treaty promise: many First Nations in Manitoba never received the full amount of reserve lands they were promised (Treaty & Aboriginal Rights Research Centre of Manitoba, 1993, p. 3). After 1951 amendments removed some of the most oppressive restrictions of the Indian Act – including overturning a restriction on hiring lawyers and bringing land claims against the federal government – Manitoba First Nations began organizing to resolve the shortfall between reserve land originally promised and what was surveyed (Henderson, 2018).

19 Manitoba First Nations signed the TLE Framework Agreement (TLEFA) in 1997, and 7 other First Nations signed comparable individual agreements between 1994 and 2008. The TLEFA provides for the return and conversion to reserve of approximately 450,000 hectares of land to Entitlement First Nations in Manitoba (Southern Chiefs Organization, 2005). For southern First Nations, “who do not have a sufficient amount of Crown land in their vicinity for transfer to the First Nation’s reserve” (Southern Chiefs Organization, 2005, p. 9), the federal government provided money to purchase and convert private land.

Increasingly, land in southern Manitoba is being converted in urban areas for economic development goals. Urban reserves have been developed in Winnipeg, Headingley, Brandon, Portage aa Prairie, Swan River, and Thompson. A recent joint publication between Manitoba Keewatinowi Okimakanak, Southern Chiefs’ Organization, and Brandon University’s Rural Development Institute, Indigenous Contributions to the Manitoba Economy, found that “urban reserves are contributing and will continue to contribute to the economy of the province in both urban and rural regions” (2019, p. 122).

Urban reserve creation occurs under the federal Additions to Reserves Policy. In order to convert a parcel of land, the First Nation needs to submit a Band Council Resolution to the federal government specifying the land in question, and contact the provincial and any affected municipal governments in order to resolve any areas of concern. For urban land, a Municipal Development Services Agreement (MDSA) generally must be negotiated between the First Nation and the adjacent municipal government. MDSA establish conditions between the First Nation and municipality regarding service payment and provision, and also sets out expectations around bylaw harmonization and dispute resolution (Southern Chiefs Organization, 2005).

The Southern Chiefs Organization (2005) commissioned a report which found that TLE implementation in Saskatchewan has been occurring more efficiently than in Manitoba, where there have been significant delays. Of six recommendations made to facilitate the Manitoba TLE process, three
specifically involved relationships between Entitlement First Nations and municipalities. Specifically, the report found that the "lack of a mutual understanding between the parties", a lack of clarity regarding the definition of a "reasonable" municipal response to TLE requests, and lower tax loss compensation in Manitoba than in Saskatchewan were all slowing the process down (Southern Chiefs Organization, 2005, p. 3).

Recognizing that delays in the Manitoba TLE implementation process were occurring at the First Nation-municipal interface, the Treaty Relations Committee of Manitoba, the Treaty Land Entitlement Committee of Manitoba, and the Association of Manitoba Municipalities signed a Memorandum of Understanding – Widokodadiwin “We All Work Together” – in 2015. A working group was established with representatives from the MOU signatories as well as from individual First Nations, municipalities, and the federal and provincial governments.

In 2017, the working group published the TLE Information Toolkit which contained a Q&A section about the TLE process, as well as a draft community accord, meant to act as an initial relationship-building agreement. Although the MOU was signed with explicit goals to: “review the established TLE-related municipal services agreements between First Nations and municipalities in Manitoba and other provinces” and to “draft template agreements to assist municipalities and First Nations involved in TLE-related and other negotiations” (TLE Working Group, 2017, p. 4), these tasks have not been completed and the working group is no longer meeting.

Treaty Land Entitlement issues have also been a major topic of discussion at an ongoing collaborative governance forum between the Southern Chiefs Organization and the Winnipeg Metropolitan Region. This forum, called the Collaborative Leadership Initiative, is intended to develop relationships between First Nation and municipal leaders and to facilitate shared projects.

Given that local-level issues have been identified as barriers to TLE implementation in Manitoba, this capstone report intends to provide a nuanced analysis of the factors which are shaping First Nation-municipal relationships during urban reserve creation. This report should assist policy-makers and local actors in advancing local-level relationships in support of TLE implementation.

Additionally, the findings of this project link the context-specific scenario of urban reserve creation in Manitoba to broader academic understandings of Indigenous-local intergovernmental relations in Canada and other British settler colonial states. The following literature review outlines the small academic field of Indigenous-local relations and lays out the conceptual framework for this project’s data analysis.
3. Literature Review

The present literature review provides an interpretation of academic research relating to intergovernmental relationships between Indigenous and local governments. Although the larger capstone report seeks to understand the specific context of urban reserve creation in Manitoba, this analysis of the factors that generally shape Indigenous-local relationships provides a useful frame through which to analyze a specific case.

Jen Nelles and Christopher Alcantara provide a theoretical starting point. Their (2009) paper “Claiming the City: Co-operation and Making the Deal in Urban Comprehensive Land Claims Negotiations in Canada” presents leadership factors, institutional factors, and milieu factors as key to explaining the emergence of intergovernmental relations between First Nations and municipalities during the negotiation of land claim settlements in Whitehorse, Yukon (Alcantara & Nelles, 2008). Similarly, in her MA thesis looking at planning between municipalities in metropolitan Vancouver and Squamish First Nation, Hightower (1974) framed the intergovernmental relations as “an interaction of social, cultural, and historical settings; the constitutional and institutional frameworks governing the Band and the municipalities; and the behaviour of the political actors involved in the process” (p. 178). The conceptual framework for the present literature review is based around the above examples, which suggest three interrelated categories:

- **Discourse Factors** – Ways of thinking about or framing problems, which are socially constructed through patterns of language and practice.
- **Policy Factors** – Formal guidelines and rules which structure local government and Indigenous planning and enable or constrain intergovernmental relations.
- **Leadership Factors** – Political behaviour and personal networks between policy actors.

For brevity, several streams of related literature have been intentionally excluded: Indigenous self-government (see, for example, Abele & Prince, 2006, Belanger, 2008), Indigenous involvement and recognition within protected area and natural resource planning (see, for example, Lane, 2001, Barry, 2012), and the experiences of Indigenous communities as residents of Canadian municipalities (see, for example, Peters & Newhouse, 2003, Peters, 2012).
3.1. Discourse Factors

Some literature on Indigenous-local relationships adopts a discourse perspective, meaning they treat “language, communication, and meaning-making as central problems in contemporary society” (Angermuller, 2015, p. 510). In the context of Indigenous-municipal planning relationships, writers with a discourse perspective tend to look at the power relationships and and practices that shape broad social understandings of the way settler and Indigenous societies and planning authorities should interact.

In recent decades, the international Indigenous rights movement, Canadian Supreme Court decisions, and land claims negotiations have brought about new understandings of how land use planning institutions in Canada should interact with Indigenous peoples (Ugarte 2014). Porter (2003) stated that “it is now well established that Indigenous claims and interests have a profound and potentially transformational effect on planning in post-colonial states” (p. 283).

However, some scholars pointed out that these changes have been slower to translate into the urban context (Porter 2010, Porter & Barry 2015). Porter (2013) argued that recent shifts in power between Indigenous people and the state in settler societies “have not been able to sufficiently shake colonial assumptions about where Indigeneity is seen as legitimate” and, as a result, the planning profession has not yet “fully come to grips with what coexistence might look like or mean in urban settings (p. 284).” Barry (2016) stated that municipal planners work on Indigenous lands, and that “land claims and other struggles over Indigenous rights do not solely occur within the context of […] natural resource-based economies” (p. 25).

In her literature review on decolonizing approaches to planning, Ugarte (2014) noted that academics have paid increased attention to the role of mainstream western planning in colonialism and Indigenous land dispossessions (See, for example, Wood 2003, Stanger-Ross 2008, Porter 2010, Jackson 2012, Dorries 2012). Hibbard et al (2008) state that the claims of Indigenous people that "state-directed land and resource planning has largely failed them and has contributed in many instances to their marginalization" is in direct contradiction to the idealized image of planning as a forward thinking and ethical field (p. 136).

Stanger-Ross (2008) explores, through a historic analysis of the City of Vancouver’s attempts to annex the adjacent Musqueum and Kitsilano reserves, the way municipal government used the concepts and discourse of urban planning to justify their claims to Indigenous land. Stanger-Ross (2008) coined the phrase municipal colonialism, meaning "settler territorial claims that were predicated on the supposed requirements of urban vitality and development" (p. 544).
Rather than placing municipal colonialism in the past, Moore, Walker, and Skelton (2011) argue that settlers continue to use colonial discourse to dominate cultural, legal, and political institutions. Importantly, the authors acknowledge that the individuals and institutions who are responsible "appear, for the most part, to be unaware that they are contributing to contemporary Canadian colonialism" (Moore, Walker, & Skelton, 2011, p. 36). This is perhaps a consequence of the Canadian settler-state using "the tools of colonialism - such as power over history, ideology, and legal and political institutions - to write colonialism into Canada's past" (Moore, Walker, & Skelton, 2011, p. 37).

This is in line with Mohammed et al’s (2018) analysis of Indigenous engagement in the City of Edmonton, which they found allowed for the “reproduction of structural violence through the unequal distribution of material and discursive power and resources” (p. 292). The authors argued that moving past the structural violence of status-quo city planning and policy-making requires municipalities to engage with Indigenous residents as “figures of sovereignty” (Mohammed et al, 2018, p. 299).

A key site of discursive conflict regarding urban planning and Indigenous governments is the tendency for planners to adopt a stakeholder approach (Belanger & Walker 2009, Fawcett, Walker, & Greene 2015, Barry 2016, McLeod et al 2017), which does not "recognize the much more substantive and fundamental challenge that Indigenous claims make to planning, which is the assertion of a substantively different form of property and use rights, knowledge forms, human-environment relationships, and mechanisms of law and governance in relation to space and place" (Porter, 2013, p. 290). Fawcett, Walker, and Greene (2015) analyzed the public engagement processes around Saskatoon’s Strategic Plan 2013-2023 and found that, while the City did make efforts to engage with the Indigenous community during their planning process, their methods treated this community as a stakeholder interest group, rather than as holding unique rights to self-determination.

Although stakeholder-oriented forms of community engagement are familiar to municipal planners and useful for resolving a variety of conflicts over urban land, this orientation does not take Indigenous political authority seriously (Dorries, 2012). Barry (2016) argued that the unique rights of Indigenous people in Canada create special responsibilities for municipal planners, which are based in “their constitutionally protected rights to territory, self-determination, and cultural integrity” (p. 16), rather than the general responsibilities of democratic government.

This critique of stakeholder discourse is an extension of Coulthard’s (2007) argument against the politics of recognition, defined as “models of liberal pluralism that seek to reconcile Indigenous claims to nationhood with Crown sovereignty via the accommodation of Indigenous identities in some form of
renewed relationship with the Canadian state” (p. 439). He claims that, although new ‘progressive’ recognition-based approaches to Crown-Indigenous relations may have positive material effects, they leave fundamental colonial power relations intact.

However, Indigenous peoples in Canada and internationally are also using and adapting the tools of western planning to pursue land justice and economic sovereignty (Zaferatos 2004, Jojola, 2008, Matunga, 2013, Webster 2016). Hirini Matunga (2013) laid out a conceptual framework for the emerging field of Indigenous planning, which he argues has been going through a “resurgence” since the 1980s, as communities begin to gain the “tools to advocate, negotiate, and mediate across the planning divide with mainstream Western planning (p. 14)”.

Some practitioners, as well, are responding to changing discourses around Indigenous recognition and participation in land use planning by adopting collaborative or decolonizing perspectives to their work (Porter, 2006, Barry, 2012). In her literature review, Ugarte (2014) organized the academic discussion around decolonizing planning into two main perspectives: one that prioritizes personal discursive responses by progressive politicians and planners, and one that prioritizes the formalization of Indigenous rights in law and policy. Although both approaches are acknowledged as important, the author stressed that planning systems are so shaped by legal and policy frameworks that the decolonizing project requires institutionalized change if it is to “transcend individual good will” (Ugarte, 2014, p. 411). The next section discusses policy and legal factors which shape Indigenous-local relationships.

3.2. Policy Factors

Authors writing with a policy/legal perspective focus on how the previously discussed discourses concerning Indigenous-settler relations are reflected in policy and legal frameworks around land use planning, and how those frameworks shape relationships between local and Indigenous governments. Through this lens, although intergovernmental planning is shaped by socially-constructed understandings of Indigenous-settler interactions and on-the-ground relationships between policy actors, it is the formal legal and policy landscape that determines what is possible and what is seemingly inevitable.

Barry and Porter (2012) emphasized the importance of policy and law when they argued that contact zones, sites where Indigenous claims interact with settler planning institutions, are structured through texts, "the legislation, policies, guidelines, case law, regulations, and mechanisms that constitute planning as a field" (p. 176). The authors acknowledge that day-to-day practice is also important, but see texts as central due to the ways they "authorize and regulate the contact zone by assigning positions and
responsibilities and by legitimizing courses of action” (Barry & Porter, 2012, p. 179). The centrality of policy and legal texts is troubling in the context of Indigenous-local relations, where some scholars have suggested there is a policy gap.

Stevenson (2001) completed an MPA thesis that looked at urban reserve creation in Saskatchewan through the Saskatchewan Treaty Land Entitlement process. The main argument of her thesis was that, because the relationship between First Nations and municipalities has been “left ungoverned by legislation” (p. 1), First Nations and municipalities have had to define their relationship without formal guidelines or external support. For Dust (1997), the major issue in negotiations around urban reserves in Saskatchewan is that they are occurring in advance of aboriginal self-government, and that “in absence of agreed parameters of aboriginal jurisdiction and an agreement on how aboriginal jurisdiction will co-exist with other jurisdictions, urban council and First Nations must improvise as best they can” (p. 491). In analyzing service agreements between the Oneida tribal government in the United States, Webster (2005) similarly found that the problem is a lack of guidance for tribal and local governments to use when considering “how to value government services and how to determine what constitutes a fair and equitable payment” (p. 347).

In his early publication on Indigenous-municipal relations in Canada, Walker (2008) found that resolving governance questions around new urban reserves can be challenging because, compared to relationships between the First Nation and federal or provincial governments, “the relationship with the municipality within which the reserve is established is open to greater flexibility and case-by-case interpretation, opening up uncertainty and trepidation at times and in places where the experience is unknown to municipal officials and citizens” (p. 33). These findings suggest that there are policy gaps regarding legislated approaches to Indigenous-local intergovernmental relationships, and that this gap can lead to confusion and negative outcomes for both parties.

The following four sub-sections provide insight on types of texts which shape Indigenous-local relationships: Treaties & Treaty Settlements, Regional & Provincial Plans, Court Decisions, & Intergovernmental Agreements.

**Treaties and Treaty Settlements**

Tait and Ladner (2018) looked at two cases of Indigenous groups using treaty settlements to pursue economic development: the proposed joint Treaty 1 reserve at the former Kapyong Barracks site in Winnipeg, MB, and commercial development by Waikato-Tainui in Christchurch, NZ. The authors found
that, although both settlement agreements were meant to return traditional territory and promote economic development, “in each instance, completion of the settlement was met with legal and political challenges initiated by the Crown or other government players in an attempt to hinder efforts by Indigenous peoples to uphold their treaty rights and provide economic opportunities for future generations” (Tait & Ladner, 2018, p. 62).

The rights and responsibilities that flow either from treaties or from contemporary claims also interact with other aspects of the legal and policy landscape of land-use planning. Livesey (2017) argued that planners in New Zealand recognize the need for local government to better acknowledge the "fundamental Maori-Crown relationship" under the Treaty of Waitangi; however, they also struggle to reconcile this need within the "settler colonial planning institution in which local government retains all legislative and bureaucratic power" (p. 12).

Regional and Provincial Plans

McLeod et al (2017) analyzed the extent to which regional planning policy statements in Ontario, Canada and Auckland, New Zealand recognize the rights of Indigenous people. These documents structure the approach of lower-tier documents such as community plans and zoning bylaws. The authors found that the most recent draft of the Ontario Provincial Policy Statement "made significant advances with respect to recognition and support of First Nations" (McLeod et al, 2017, p. 81). However, the authors argue that the current approach is "limited and limiting" in that it continues to advance both "the notion that First Nations are just another stakeholder" and "the assumption that First Nations' lands, interests, and rights end at the boundaries of a reserve" (McLeod et al, 2017, p. 82).

Looking at a guiding policy document for regional planning in British Columbia, Canada, Barry and Porter (2012) criticized "approaches that freeze or fix Indigenous peoples to defined ways of being and acting in planning systems and close off opportunities for Indigenous agency in defining the nature of their political and spatial relationships with state-based planning systems (p. 182). The authors argued that contemporary discourse around Indigenous rights and self-determination are not reflected in the policy framework.

In British Columbia, Porter and Barry (2015) argued that the municipal perspective on Indigenous-local intergovernmental relations, as expressed through policy guidelines and resolutions of the Union of BC Municipalities, sees Indigenous rights and authority as constrained to reserve or treaty settlement lands, and as fitting neatly into the "administrative and spatial orders and norms already operating within the
planning system" (p. 34). The BC planning system involves provincial planning authority delegated to municipalities in a flexible and autonomous manner, which results in an approach that does little “to unsettle established territorial, political, and administrative orders” (Porter & Barry, 2015, p. 33).

Regional plans have impacts on how local planning authorities operate. Berke et al (2002) found that local plans in New Zealand were more progressive with respect to intergovernmental relationships with neighbouring Maori communities when they were supported by high quality regional plans and policy statements. In New Zealand, the 1994 Resource Management Act provided “considerable opportunity for local government to enter into resource management relationships with Maori” (Berke et al, 2002, p. 118). However, local interpretation of this national mandate is variable, and the authors suggested that New Zealand policy-makers establish national expectations “on how the values and concerns of local Indigenous people can be recognized” (Berke et al, 2002, p. 131).

Court Decisions

Tennant (2000), discussed the impact of the 1997 Delgamuukw decision – which “recognizes that aboriginal title exists, defines it as a right to land, and places it within the guarantee provided by section 25 of the Constitution act, 1982” (p. 144) – on First Nation-municipal relations. Although they do not explicitly apply to municipalities, Canadian Supreme Court decisions like this one can impact the way municipalities conceptualize their work with Indigenous governments.

However, there very few legal decisions that specifically define how municipalities and First Nations must interact in order to fulfil obligations around reconciliation. One exception is surrounding the Duty to Consult, where a small body of legal scholarship has pulled apart and questioned the ways in which the Crown Duty to Consult impacts and is potentially delegated to local government in Canada.

Supreme Court of Canada rulings have made it clear that the Crown “bears the responsibility for consultation [with Indigenous peoples] and that a failure to consult may result in overturning or staying decisions of the Crown until consultation has taken place” (Imai & Stacey, 2014, p. 293). In a recent case, Neskonlith Indian Band V Salmon Arm (City), the BC Court of Appeal decided that “as the municipality was not the Crown, and the municipality did not have an obligation to consult, the planned project should go ahead” (Imai & Stacey, 2014, p. 294), and further that the First Nation would need to pursue the province in some other forum if they felt the Crown had not fulfilled its obligations around the Duty to Consult.

In the case, the Neskonlith Indian Band argued that the Crown cannot delegate powers that it does not have, and therefore that municipal land use responsibilities delegated by the provincial Crown must be
exercised in accordance with the duty to consult (Imai & Stacey, 2014, Hoehn & Stevens, 2018). However, the decision stated that procedural aspects of the duty to consult needed to be explicitly delegated to municipalities or third parties.

Hoehn and Stevens (2018) argued that local governments have a duty to consult that comes from practical concerns regarding reconciliation in Canada. The authors describe several cases where local government consultation of Indigenous people has led to positive outcomes, as well as examples such as the Oka crisis, “where a failure to consult, to accommodate, and to build positive relationships have led to confrontations that have left ugly scars on the Canadian psyche” (Hoehn & Stevens, 2018, p. 973). Hoehn and Stevens (2018) stated that, because municipal and Indigenous governments have similar areas of jurisdiction and are often located in close proximity, “courts should affirm that local governments have a duty to take the constitutional rights of their Indigenous neighbours into account when making decisions that affect them” (p. 974).

Through an examination of a highway construction project, Fraser and Viswanathan (2013) investigated “the extent to which the planning process in Ontario as well as legislated policies and consultation protocols ensure that the Crown and municipalities uphold their legal duty to consult with First Nations” (Fraser & Viswanathan, 2013, p. 3). This paper stated that Aboriginal and Treaty rights are not a part of the taken-for-granted municipal governance landscape. Municipalities do not have the legal obligation to consult with a First Nation when Aboriginal and Treaty rights are potentially impacted, “however they do hold statutory obligations since the Crown can delegate its procedural duties to third parties” (Fraser & Viswanathan, 2013, p. 3). However, Ontario provides municipalities with little guidance on how to conduct land use planning in compliance with the Duty to Consult.

Regardless of whether municipalities are obligated to fulfill the Duty to Consult, this Crown obligation can impact intergovernmental relations. In his analysis of First Nation-municipal collaboration in forestry-based regional economic development in northeast Ontario, Bullock (2011) found that, there was a “realization among municipal representatives that First Nations duty to consult was a powerful tool to combat senior government and industry control was a critical turning point in First Nation-municipal collaboration” (Bullock, 2011, p. 86).

**Intergovernmental Agreements**

Nelles and Alcantara (2011) analyzed a sample of 93 publicly available Indigenous-local intergovernmental agreements to develop a typology of agreements: jurisdictional negotiation
agreements, which are contracts for the provision of services; capacity-building agreements, which commit municipal resources to developing First Nation governance capacity; decolonizing agreements, which “explicitly recognize that the First Nation signatories historically occupied the lands that are now under the municipal and/or regional authorities” (p. 320); and relationship agreements, which lay out the intention and process by which a municipality and a First Nation will establish and maintain a formal relationship.

Nelles and Alcantara (2011) looked at the depth of Indigenous-local relationships using the concept of cooperative intensity, meaning “the degree of authority and resources sacrificed by each party to collective control in the interest of long term integration” (p. 323). In the case of intergovernmental agreements in BC, the authors found that, over time, First Nations and municipalities seem to be building “more cooperative, collaborative, and perhaps decolonized intergovernmental relationships based on principles of mutual respect and interest” (Nelles & Alcantara, 2011, p. 323).

Looking specifically at intergovernmental agreements developed around a Muskeg Lake Cree Nation (MLCN) reserve developed within the borders of Saskatoon, Dust (1997) identified three key issues raised in the negotiations of a Municipal Development Servicing Agreement (MDSA): jurisdiction, in which MLCN and Saskatoon each wished to hold jurisdiction over the new reserve; land use, in which Saskatoon council wanted to ensure that development on the new reserve fit within the surrounding environment; and taxation, in which Saskatoon wanted to make sure the new reserve paid property and business taxes equal to those levied on the surrounding properties. In all of these cases, MLCN was able to retain official jurisdiction and taxation power, but signed an agreement that bound them to act “consistent with provincial and urban legislation in the same area” (Dust, 1997, p. 485). The Federal Additions to Reserves policy and the Treaty Land Entitlement framework agreement provide direction for municipal and First Nation councils to address the above conflicts, but Dust (1997) claimed that “significant issues remain to be addressed, particularly regarding jurisdiction, law enforcement, and dispute resolution” (p. 490).

Despite ambiguous discourse and gaps in policy, some municipalities and First Nations are finding it mutually beneficial to develop personal and professional relationships in pursuit of collaborative action at the local level. In an important early article on Indigenous-municipal relationships, Walker (2008) used a series of focus groups with Indigenous and non-Indigenous academics to argue that, although provincial and federal governments have power to change the way municipalities work with Aboriginal communities, “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” (Walker, 2008, p. 23).
3.3. Leadership Factors

Writers with a leadership perspective focus on the structure and strength of networks between policy actors. Authors writing in this stream hold that strong ties between the membership, leadership, or staff of Indigenous and municipal governments can produce collaborative action, regardless of an enabling or restraining legal context (Nelles & Alcantara, 2014). On the flip side, negative relationships between policy actors can make collaborative action more difficult, despite enabling legislation.

Overcoming Strained Relationships

Sometimes intergovernmental planning between a First Nation and a municipality has to overcome many years of negative history between the two communities. Hightower (1974) looked at intergovernmental relationships between Squamish First Nation and 3 municipalities in metropolitan Vancouver. Although there was a historic ignorance of Squamish First Nation leadership in regional governance, negotiations regarding planning and development issues led to the recognition "that the Squamish Band is indeed a fourth unit of government on the North Shore" (Hightower, 1974, p. 179). However, Hightower (1974) found that "a certain air of paternalism is exhibited" (p. 180) in municipal dealings with the Squamish First Nation.

Similarly, in analyzing relationships between the City of Calgary and the neighbouring Tsuu T’ina Nation, Wood (2003) found that, at City Hall, "awareness of the reserve is ad-hoc, whereby the mayor, aldermen, and bureaucrats express interest in meeting with the Tsuu T’ina usually when there is something they want" (p. 467). These sources resonate with the concept of “interest convergence,” which suggests that only those plans and aspirations of Indigenous communities which intersect with settler interests are likely to move forward (Belanger & Walker 2009), which Bezamat-Mantes (2018) argued is a relevant factor in urban reserve creation in Winnipeg.

On the other hand, municipalities sometimes feel left out of urban reserve and land claim negotiations in Canada, given that those negotiations have the potential to impact their jurisdiction (Dust, 1997). Mountjoy (1999) uses the term “territoriality” to describe the way both First Nations and municipalities are protective of their jurisdiction. This uncertainty and defensiveness can undercut the possibility of positive personal and professional relationships between First Nation and municipal leaders, “relationships that can bear more fruit over time than official agreements” (Walker, 2008, p. 33).

These examples suggest that the process of building intergovernmental relationships is not an easy one. Zaferatos (2004) identified lessons from a case of positive regional planning between local and tribal
governments in Washington State. He argues that “regional cooperation requires personal and professional commitments by elected officials and, especially, by planning staff tasked with resolving complex and often contentious issues,” and that “time and resources must be dedicated to education, orientation, and the development of skills among both policy makers and staff involved in the relationship” (Zaferatos, 2004, p. 93).

Relationships Leading to Positive Outcomes

Alcantara and Nelles (2009) described how Indigenous peoples in Canada with unceded traditional territories are negotiating comprehensive land claims, also known as modern treaties. These agreements exchange undefined Aboriginal rights for defined rights to land, money, and political authority. The authors used a case study of Kwanlin Dun First Nation treaty negotiations in Yukon Territory to examine complications that arise when lands within a major municipality are involved in the treaty process.

In this case, the City of Whitehorse ceded key waterfront land that was holding up treaty negotiations and Kwanlin Dun agreed to taxation and land use provisions in the treaty that were compatible with municipal interests, all without engaging in formal negotiations. Alcantara and Nelles (2009) argued that this cooperation was predominately "facilitated by a change in municipal and aboriginal leadership" (p. 722). Similarly, Fraser and Viswanathan found, though qualitative interviews with 17 subjects who had worked on the Red River Valley Parkway, that "in spite of absence of clear guidance, it is evident that establishing and maintaining good relationships between municipalities and First Nations is a pivotal starting point (Fraser and Viswanathan, 2013 p. 16)."

In their (2014) paper “Explaining the Emergence of Indigenous-Local Intergovernmental Relations in Settler Societies: A Theoretical Framework,” Nelles and Alcantara (2014) claimed that “the decision to enter into an Indigenous-local] partnership is determined by two important factors: the capacity of actors to enter into such an arrangement, and their willingness to do so” (p. 608). Nelles and Alcantara (2014) argued that the parties are able to use willingness to overcome capacity issues.

In a set of recommendations flowing from an analysis of provincial planning policy in Ontario, McLeod et al (2017) argued that "the Province should prioritize relationship-building by providing joint operational capacity funding to sustain long-term partnerships between First Nations and adjacent municipalities to strengthen mutual understanding and learning" (p. 83) and that the Province, First Nations, and municipalities “should develop specific guidance material for the [Provincial Policy Statement]
relating to the need for effective communication and effective relationship-building to address issues of capacities and understanding between municipalities and First Nations” (p. 84).

Good relationships provide flexibility and can solve problems not considered by the policy framework. In the case of new urban reserves in Saskatoon, although loss of planning control over new urban reserves in theory “could make it difficult to produce a comprehensive physical development plan for a municipality, […] in the eight years that urban reserves have existed in Saskatchewan there have been no major planning problems and no visible negative effects to the communities” (Stevenson, 2001, p. 22). Stevenson (2001) argued that “a good relationship between municipal and First Nation governments is more important than any agreement” (p. 20).

Also looking at Treaty Land Entitlement in Saskatchewan, Garcea (2008) described some of the politics of satellite reserve creation. The strongest proponents have unsurprisingly been the leadership and membership of the proposing First Nation. Federal and Provincial governments have been relatively supportive as a part of obligations around resolving land claims and contributing to economic development of First Nation communities. Municipal leaders have also been supportive when they can see the potential benefits to their communities.

Opposition in southern Saskatchewan came primarily from non-Indigenous communities with concerns regarding possible negative effects of urban reserves, including: uncertainty around land use due to inapplicability of municipal bylaws; potential loss of tax revenues; uneven business playing field due to tax exemptions; and effects on real estate values and quality-of-life for neighboring properties (Garcea, 2008). The lack of negative effects, emergence of positive cases, better education regarding the policy and legal framework, and the provincial municipal tax loss prevention program have all reduced opposition considerably (Garcea, 2008). There is widespread recognition, however, that these benefits depend on whether First Nation and municipal governments are able to “coordinate their respective planning, development, land use, and service-provision initiatives in ways that are consonant, constructive, and mutually beneficial” (Garcea, 2008, p. 304).

Bullock (2011) looked at collaborative regional economic development between First Nations and municipalities in the northern Ontario. A flagging forestry industry led regional mayors to create the Northeast Superior Forestry Community Corporation and First Nations leaders to create the Northeast Superior Regional Chiefs Forum to advance local control and benefits over forestry development. Although there was initially conflict over the extent of Indigenous participation, incorporation of First Nation concerns
into the strategic plan of the Community Corporation established First Nations as key partners in the strategy to develop a new sustainable regional forestry industry.

In this context, Bullock (2011) found that trust and open dialogue between First Nations and municipalities was key to the positive outcome, and resulted in a “willingness to search for common solutions to problems” (p. 86). Because regional First Nations and municipalities had little history of interaction, participants noted that “a forum for direct interaction and open dialogue between First Nation and non-First Nation leadership was seriously needed in the region to familiarize the long-separated communities” (Bullock, 2011, p. 86).

**Leadership Capacity**

Stevenson (2001) argued that the conversion and management of new urban reserves would be improved if First Nation and municipal governments were more informed about “this new trend and the various relevant acts, policies, rules, and regulations that govern it” (p. 24). Where political leaders are the driving forces, education and training can be just as effective as actual policy reform.

Evans (2011) looked at relations between tribal and local governments in the United States and asks how, in some cases, “tribes in constrained circumstances have convinced states and localities to change regulatory standards, pursue joint initiatives, and deliver assistance to tribal communities” (p. 662). Based on qualitative and quantitative analysis of Indigenous-local relations in 3 regions, Evans (2011) found that the success of tribal governments is attributed to their cultivation of “knowledge about the preferences of other actors, the approaches that are more likely to persuade, the problems that the groups faces, and the possible solutions to those problems” (p. 662).

### 3.4. Conclusion

Although the proposed theoretical framework of discourse, policy, and leadership factors provides a meaningful way to dissect literature concerning Indigenous-local relationships, the divide between the identified factors is artificial. As opposed to identifying coherent streams of literature which explicitly focus on one of the identified factors, this literature review has identified themes which are present in varying degrees within the literature concerning Indigenous-local intergovernmental relationships.

No one factor clearly emerges from the literature review as dominant in terms of shaping Indigenous-local intergovernmental relationships. This is, in part, due to the mutually constituted nature of the discourse, policy, and leadership. Discourse regarding Indigenous-settler relations structures public
debate and the types of legislation that is passed; alternately, legislation can create and recreate conditions of dispossession and poverty which can reinforce negative discourses (Gomez, 2010). Therefore, the gap identified in the present literature review is one of synthesis: how do discourse, policy, and leadership factors combine to determine the outcomes of Indigenous-municipal intergovernmental relations? The following findings section seeks to dissect the impacts of each of the identified factors, and the discussion section seeks to draw together these disparate elements and explore how they are collectively shaping First Nation-municipal relationships around urban reserves in Manitoba.
4. Methods

4.1. Research Approach

The present capstone is a secondary analysis of interview data from Dr. Janice Barry’s (referred to hereafter as the PI, or Principal Investigator) SSHRC-funded research project, “Indigenous Peoples, Municipalities, and the Emergence of New Urban Planning Contact Zones: Examples of Manitoba, Canada & Canterbury, Aotearoa New Zealand”. Alex Hallbom was hired as a research assistant to coordinate and conduct interviews for the Manitoba portion of this international comparative project. With the PI’s consent, Alex Hallbom has developed a new set of research questions to analyze these interview transcripts.

4.2. Data Collection

Data for this project was collected under the ethics protocol of the PI using semi-structured interviews with eight senior-level policy actors involved in Manitoba Treaty Land Entitlement implementation. Interviews lasted from 30 minutes to 1 hour and were conducted at participant’s place of work or in neutral public spaces.

Interviewees were selected using a purposive, non-random sampling strategy, which focused on identifying subject-matter experts representing First Nation, municipal, federal, and provincial perspectives. After several initial interviews with subjects identified through the PI’s professional network, additional interviewees were identified using a snowball sampling method, where participants were asked to identify additional candidates as part of the interview debrief. All interviewees were contacted directly through email, using publicly available contact information.

The interviews were guided by a schedule consisting of approximately 10 open-ended questions. Interview schedules were adapted to each participant in order to address their specific areas of experience and expertise. By using a semi-structured approach, the interviewer was able to adapt to unexpected lines of questioning and to prompt participants to elaborate on specific questions (Grey, 2004, p. 217).

Interviews were digitally recorded and transcribed. Transcriptions were sent to the participants with an invitation to clarify, elaborate, or retract information. At the end of the agreed-upon window for revision, the transcripts were anonymized and compiled to form the data set for this project.
4.3. Data Analysis

Data analysis for this project occurred over several stages. During transcription, the researcher made rough memos that highlighted emerging patterns or key themes from each interview transcript. Additionally, the close reading involved in transcribing the interviews provided the researcher with a broad understanding of the participants’ perspectives.

An initial round of exploratory coding was conducted using qualitative analysis software to sort the interview transcripts into sections related to the roles of First Nation, municipal, non-governmental, federal, and provincial actors in urban TLE implementation. Additionally, the data was sorted into broad categories of “challenges” and “opportunities.”

The initial sorting was conducted at the same time as a preliminary annotated bibliography of relevant literature. A process of brainstorming and mind-mapping was used to develop the following working conceptual framework: “First Nation-municipal intergovernmental relations appear to be shaped by discourse factors, legal/policy factors, and leadership factors.”

Based on this framework, a second round of data analysis was performed. The second round consisted, first, of open coding, which identified themes and patterns in the data, and, second, of sorting those themes and patterns into one of the three factors assumed to be shaping relationships between Winnipeg Metropolitan Region municipalities and Treaty 1 Nations.

4.4. Limitations

The primary limitation of this capstone project is the relationship between data collection and data analysis. The data-set used in this project was collected by another researcher using an interview schedule and sampling strategy tailored to a different set of research questions. Although the research questions used in this capstone project were developed to suit the data, this disconnect limits the completeness of the findings; more specific questions and prompts would have been included if the interview schedule had been developed along with the research questions of this capstone project.

Additionally, this project has two common limitations for qualitative, interpretive research: external validity and reliability. The rest of this section briefly discusses how each of these limitations impact this project.

Yin (1989) defines the problem of external validity as “establishing the domain to which a study’s findings can be generalized” (p 34). There are significant threats to the external validity of this research project. Factors affecting Winnipeg Metropolitan Region municipalities and Treaty 1 Nations may be too difficult to extract from their historic and legal context to make generalizable statements about First Nation-
municipal relationships. However, the approach of this study is not to develop a universal theory of First Nation-municipal relations, but rather to investigate how the experience in Manitoba resonates with themes in academic literature; a process Yin (1989) refers to as generalizing to theory.

Yin (1989) describes the problem of reliability as “demonstrating that the operations of a study – such as the data collection procedures – can be repeated with the same results” (p. 34). Another researcher, armed with the present methods section, would meet some challenges in attempting to replicate this study. Qualitative data analysis is unavoidably subjective. The themes that appeared to emerge from initial readings of the interview transcripts and academic literature, and which formed the initial conceptual framework, might have been interpreted differently by another researcher. In general, the main strategy for addressing threats to reliability in this project is the close oversight of the PI over data collection and ongoing consultation throughout the data analysis process.
5. Findings

This section summarizes the responses of senior-level policy actors in urban TLE implementation in Manitoba, as related to factors which are shaping First Nation-municipal relationships. As with the previous literature review, the findings are organized according to the conceptual framework of discourse factors, policy/legal factors, and leadership factors. Challenges and opportunities associated with each factor are explored using quotations from the interview data.

5.1. Discourse Factors

Challenges

Interview subjects suggested that First Nations and municipalities had no consensus on how their rights, jurisdictions and aspirations ought to interact, and that this was a fundamental challenge for positive intergovernmental planning relationships around new urban reserves in Manitoba. One staff member of a First Nation non-governmental organization suggested that the issue is deeper than technical zoning issues when they stated that there were “two paradigms” and that “the two systems are just different” (First Nation NGO 2, Interview).

Municipalities are used to having comprehensive jurisdiction over land use regulations and property taxation within their boundaries. Even if, legally, they do not have any guaranteed control over reserve lands, there is a shared understanding that leads local councils to attempt to extend their jurisdiction over urban reserves. A staff member from a First Nation non-governmental organization explained that there is a persistent desire and attempt on the part of municipalities to maintain jurisdiction over converted reserve lands, even though “technically they can’t control it” (First Nation NGO 1, Interview).

This tendency of municipalities to continue to push for local control stems partially from their inexperience with dealing with First Nation communities as governments. A provincial manager suggested that municipalities base their dealings with First Nations with proposed urban reserves on their experience working with developers and other private land interests, and acknowledged that there were few other contexts “where a municipality has to work with another entity that is a government” (Provincial Manager, Interview).

The government-to-government framing that is increasingly status-quo in provincial and federal dealings with First Nations is not a common operating practice for municipal staff and council. A staff
member from a First Nation non-governmental organization stated that some intergovernmental tensions came from municipalities not having a strong understanding of First Nation “jurisdictional capabilities as a government and an entity […] not created by any authority other than just occupying the lands” (First Nation NGO 1, Interview).

This gap between municipal and Indigenous understandings of authority means that First Nations arguments that depend on increasingly mainstream notions of government-to-government Crown-Indigenous relationships are not translating to the municipal context. A provincial minister suggested that First Nations can’t use “a rights-based argument” or “lofty constitutional things” when working with municipalities and must focus on “granular” issues like property values, traffic, and public perception (Provincial Minister, Interview).

Participants also noted that problems can arise when First Nations disregard municipal stakeholders and opt to deal directly with federal and provincial governments, who have more central implementation roles in Manitoba TLE. A provincial minister argued that First Nations should not view their relationship with the Crown as the only important relationship and leave out the municipality, “because that is where the rubber hits the road” (Provincial Minister, Interview). In a comment about recommended First Nations approaches to urban reserve negotiation, one planning consultant suggested that taking a hardline “nation-to-nation” approach would not lead to successful reserve conversion (Planning Consultant, Interview). In his professional opinion, the only way to approach urban reserve development is “like most First Nations that have successfully made urban reserves have done – like: we are developers now” (Planning Consultant, Interview). Here we can see that, because municipalities are such strong stakeholders in the reserve creation process, First Nations are pushed to take on strategic roles that can minimize their self-governing authority.

Opportunities

The primary area of opportunity identified by interviewees for addressing discourse barriers to positive intergovernmental relations is through education. As evidenced above, both First Nation and municipal councils have assumptions about their relationship which structure and sometimes constrain collaboration. However, interviewees broadly agreed that new understandings of Indigenous-settler relations needed to be incorporated into the implementation of TLE in an urban context. A provincial manager involved in briefing Manitoba municipalities with urban TLE selections stated that “society is
changing and times are changing, you know you have the Calls to Action and we need to do more education and awareness” (Provincial Manager, Interview).

A staff member from a non-governmental organization explained that differences between First Nation and municipal jurisdiction make shared understandings of rights to land difficult. Recognizing the complexities of the situation, he suggested that “cross-education needs to happen to municipalities and First Nations” (First Nation NGO 1, Interview).

Provincial staff see that they have a role in educating municipalities in both the technical details of urban reserve creation and a broader government-to-government approach to First Nation-municipal relations. A provincial manager explained that, even though the Manitoba Department of Indigenous and Northern Relations “doesn’t have an avenue or a structure to work with all municipalities,” it understands that part of implementing TLE in urban areas is in dispelling “misconceptions” (Provincial Manager, Interview). However, provincial efforts at educating municipalities has been fragmented and reactive: “usually when there is land in the queue” (Provincial Manager, Interview).

One strategy identified during the TLE Working Group was integrating Indigenous awareness training into Mayor and Council orientation. The Association of Manitoba Municipalities already delivers an orientation to new elected officials, and interview subjects argued that it could be expanded to include broad information about TLE and “acknowledging that now you are working with another government versus a kind of a private property owner” (Provincial Manager, Interview).

Federal staff also sees that education has been necessary in order to make the municipalities understand that implementing TLE is “a fait accompli,” and that viewing new urban reserves as a threat to be resisted is likely to lead to poor outcomes for municipalities as well as First Nations. A federal director discussed how municipalities should view proposed urban reserves as opportunities rather than conflicts, and that federal and provincial governments should use educational opportunities with municipal leaders to say: “this is something that you need to understand better in order to make it a win-win rather than an ongoing fight (Federal Director 2, Interview).”

For some participants, the end result of a cross-education program for First Nations and municipalities is not just a broader understanding of the technical details of TLE or a win-win approach to negotiation, but an understanding that urban reserves are a part of the Canadian reconciliation project. The following quote by a provincial minister illustrates the possibility of moving past the rational negotiation of service fees and bylaws, and of acknowledging the need to support Indigenous businesses and urban communities:
This suggests that discursive understandings of what the Canadian reconciliation project entails can have significant effects on the kinds of opportunities available for First Nations developing urban reserves.

5.2. Policy Factors

Challenges

Interview participants found that aspects of the legal and policy context of urban reserve creation undermined the emergence of positive intergovernmental relationships. The key challenge identified by interviewees was a lack of provincial or federal direction regarding how to resolve the key issues of service provision and bylaw harmonization. TLE and ATR policy provides direction for First Nations and municipalities to address these issues within a Municipal Development Service Agreement (MDSA), but significant questions remain at the local level about fair and appropriate provisions. Additionally, after the reserve is created and an MDSA is signed, the First Nation and municipality are relatively unsupported by policy in their efforts build and maintain positive business relations. Finally, because several large and valuable pieces of land are involved in urban reserve negotiations, concerns about setting precedents that might affect those properties can stall negotiations.

Lands management on municipal lands and First Nation reserves operate within provincial and federal legal frameworks, respectively. There is limited legislation to guide intergovernmental relationships or support cross-jurisdictional planning. For municipal and First Nation councils unfamiliar with complicated intergovernmental land transaction and agreements, the task of negotiating an MDSA can be complicated. The following quotation by a staff member of a municipal non-governmental organization identifies the technical difficulties that arise from working across jurisdictional boundaries:

“...it’s defined in the Municipal Act how municipalities work on planning. [...] But, because First Nations have a different way of building economic development through federal acts it’s almost like a parallel process. (Municipal NGO, Interview)”

Conflict Points in Service Agreements

The two key points of conflict for MDSA negotiations are service payment and bylaw harmonization. Although TLE agreements and the ATR policy direct First Nations and municipalities to address these issues, there are no mandated outcomes. Both parties are free to pursue their respective
interests in ways that impact the other’s jurisdiction. In this context, gaps in the policy framework for First Nation-municipal intergovernmental agreements allow the parties to treat MDSA negotiation as a sort of zero-sum game, defined as “a situation in which two “players” with strictly opposed interests each make a decision that results in one player’s winning equaling the opposing player’s loss (Zero-Sum Game, 2008).

Municipalities do not have the power to tax reserve lands. However, reserves in urban areas will require municipal services, which are generally paid for via a yearly lump-sum payment. The main question around services and service payment is how much the First Nation should pay. A staff member from a non-governmental organization representing First Nation interests explained that most First Nations attempt to negotiate service payments that are lower than what would be paid on the same property if it were privately held. In one example he stated that a First Nation is attempting to pay “no more than 80% of what is being taxed, because they feel that 20% is the admin and governance fee that is built into those taxes that they shouldn’t have to pay” (First Nation NGO 1, Interview).

However, municipalities feel threatened by the possibility of reserve creation reducing their tax base. Local governments rely heavily on the property tax to pay for services, and they have limited means to make up for lost revenue. The same non-governmental staff member as above acknowledged that municipalities “don’t want to lose that tax-base because that helps municipalities in providing all of their services to their constituents or their members” (First Nation NGO 1, Interview). However, he was also firm in stating that “the intention is not to make a profit off of the First Nation for the services” (First Nation NGO 1, Interview) and that service payments should be linked to the actual costs of providing services, considering that First Nation have their own administration and governance costs.

Some commentators stressed that municipalities will likely increase their overall tax base during urban reserve creation, as the new development will require more services and will increase the land’s taxable value; this is true even if the First Nation negotiated a service payment lower than that of a comparable private landowner (First Nation NGO 1, Interview). This suggests that adopting a non-zero-sum, cooperative economic development perspective could allow both First Nation and municipal governments to meet their needs.

Municipalities also do not have the power to enforce bylaws on adjacent reserves. In the urban reserve context this means that municipal zoning and building codes do not automatically apply to reserve developments. However, some MDSA plainly state that on-reserve development must comply with municipal bylaws, including zoning (Federal Director 1, Interview). A planning consultant explained the municipal line of thinking, which sees new urban reserves as a threat to their jurisdiction. In his professional
opinion, allowing a First Nation to develop an urban reserve outside of municipal bylaw controls “would be untenable politically,” and that they would have to “abide by and respect the community standards and way of operating” (Planning Consultant, Interview).

Although, to date, zoning control over new urban reserves has not been a major point of conflict due to First Nations choosing to develop projects generally in line with existing regulations (First Nation NGO 1, Interview), several participants noted that it did present a potential barrier to maximizing returns. A staff member of a non-governmental organization representing First Nation interests stated that, to the extent that zoning restrains development and profits from urban reserve lands, First Nations are resistant to operating under municipal bylaws. He stated that “they don’t want to just let them sit, so anything that is going to impede that, for sure, they are going to be pushing back” (First Nation NGO 1, Interview).

Interview subjects from the federal government expressed concerns that the MDSA in Manitoba were requiring First Nations to operate under municipal bylaws (Federal Director 1, Federal Director 2, Interview). One federal public servant plainly stated that “the First Nation should not be under the municipal planning department” and that signing an MDSA which requires them to comply with municipal bylaw “oversteps a bound that they shouldn’t have agreed to” (Federal Director 1, Interview).

One theme that several interviewees raised was that municipal concerns around the need for bylaw control over on-reserve development were overblown, and that market pressures and the practical need to maintain good-neighbour relationships would ensure that First Nations developed context-suitable projects. For a staff member of a non-governmental organization, First Nations understand the constraints on their development regardless of municipal control, and that municipal fears that First Nations “are going to be putting something outlandish in this area” are not “realistic” (First Nation NGO 1, Interview).

Limited Guidance

Although the TLE Agreements and the ATR policy provide some direction regarding the issues that First Nations and municipalities are expected to address through their service agreement negotiations, there is no clear direction regarding the appropriate approach or outcomes. When asked whether the provincial government would consider providing municipalities and First Nations with a template MDSA, a provincial manager suggested that it would not be practical as “it is so open-ended in terms of what contract might come up” (Provincial Manager, Interview). The provincial approach appears to be to “leave that up to the two parties and hope they come to a resolution” (Provincial Manager, Interview).

Support for First Nation-municipal intergovernmental negotiations typically ends when the land is transferred into reserve status. A provincial interviewee suggested that they viewed an MDSA as “more of
a contract” (Provincial Manager, Interview), and a federal public servant stated that “once they’ve signed an agreement […] we are out of it” (Federal Director 1, Interview). Both interviewees suggested that they could possibly be drawn back in as a facilitator if conflict arises, but that their departments had no proactive or defined role post-conversion.

Federal and provincial interviewees admitted that there was no clear forum for First Nations or municipalities looking for advice regarding intergovernmental relations (Federal Director 1, 2, Provincial Manager, Interview). The following quotation illustrates the policy gap:

“there is no real arbiter, other than the courts. And again, they are going to have trouble… I don’t know; It comes down to a non-enforceable relationship that’s just gone sour. What do you do?” (Federal Director 2)

Although court decisions regarding First Nation-municipal intergovernmental relationships could actually establish some clarity, it does seem that providing a structure for resolving conflicts through either the provincial government, federal government, or some regional structure could reduce conflict and support urban reserve development.

**Precedents Constraining Possibilities**

Although there is limited external guidance for municipalities and First Nations struggling to negotiate an MDSA, the outcomes of this key relationship document are being constrained by precedents set by existing agreements. Precedents which limit municipal bylaw control or taxation powers are especially threatening in light of the massive Kapyong Barracks site in Winnipeg. Seven Treaty 1 First Nations and the Canadian government have signed an agreement-in-principle regarding the 160-acre site of the former Kapyong Barracks, and are moving towards establishing a jointly managed Treaty 1 urban reserve with commercial, residential, and recreation facilities (Froese, 2018, November 5). A provincial minister stated that “everybody thinks: ‘ok, if we cave on this here, it means we are going to have to do this at Kapyong’” (Provincial Minister, Interview).

Additionally, an early MDSA between Long Plain First Nation and the City of Winnipeg contained provisions for municipal bylaw control over on-reserve development and for Long Plain First Nation to pay 100% of the assessed property tax. A federal public servant recounted a scenario during negotiation of an MDSA for Peguis First Nation’s new urban reserve site in Winnipeg, where “the City came back with the Long Plain [agreement] with Long Plain crossed out and Peguis put in and said, no, no, we’ve signed this before, let’s just go with this one” (Federal Director 1, Interview).
**Gaps in Legal Authority**

Another issue, identified by only one interview participant, is a lack of legal authority by (1) the federal and provincial public service to implement land transactions required for TLE implementation within a reasonable timeframe, and (2) for First Nations to make Indian Act land use designations needed to operate commercial enterprises on urban reserves with existing developments or on jointly-controlled reserve lands such as the Kapyong Barracks site. The following quotation illustrates a Federal Director’s concerns:

“The reality is that legal authority specifically needed to do this task have not been created. So, we are using, begging, and borrowing legal authorities that were created for other purposes and it’s not working. […] And First Nations have been left hanging. They don’t have the authorities to do what they need to do either.” (Federal Director 2)

**Opportunities**

Participants identified opportunities for reforming the policy and legal context surrounding urban reserve creation. Broadly, the main opportunities were addressing service payment and bylaw harmonization issues on a regional basis and advancing First Nation legal authority.

**Provincial or Federal Input on Service Payment Issues**

Federal and provincial governments have the opportunity to resolve persistent questions around service payments and tax-loss concerns by establishing expectations around appropriate costs. Compared to piecemeal negotiation of individual service agreements, a regional process might enable participants to look past the threat of any specific reserve conversion and to focus on broader principles and shared community goals. A non-governmental organization staff member even suggested that municipalities might be responsive to a specific mandate from the provincial government that lays out the appropriate response to urban reserve conversions and that municipalities “are just sort of waiting for somebody to just tell them what to do and tell them how it should be” (First Nation NGO 1).

Even though the MDSA is signed between the First Nation and the municipality, senior levels of government are able to provide technical support and facilitation to move the process forward. Interview responses from a provincial public servant suggest that First Nations and municipalities are increasingly requesting, and receiving, provincial and federal support in their negotiations (Provincial Manager, Interview).
Additionally, for federal properties within municipalities, which have a similar taxation relationship to urban reserves, the Payment In Lieu of Taxes Act (PILTA) board has a Dispute Advisory Panel, which hears “disputes about payments in lieu of taxes between the federal government and local taxing authorities” (Government of Canada, 2018). Some interviewees see the PILTA board as an appropriate forum for resolving service payment issues between First Nations and municipalities (First Nation NGO 1, Federal Director 2, Interviews).

The Treaty Land Entitlement Framework Agreement includes provisions for the provincial government compensate municipalities if a First Nation negotiates an MDSA with lower service fees than municipal property taxes. Several interviewees suggested that municipalities could renegotiate the 5-year length of the tax loss compensation program. A comparative review of Saskatchewan and Manitoba TLE implementation commissioned by the Southern Chiefs Organization found that a more generous tax loss compensation in Saskatchewan, with costs shared by the federal and provincial governments, was a factor in more efficient implementation in Saskatchewan (Southern Chiefs Organization, 2005, p. 1).

Increase First Nation Legal Authority

Some participants saw the First Nations Land Management (FNLM) Act, which enables First Nations governments to manage their lands through a custom Land Code as opposed to under the Indian Act, as a way to provide First Nations with legal authority to manage lands in an urban setting. A federal public servant suggested that the Indian Act “doesn’t provide the legal foundation” for First Nations adopting equivalent bylaws to the adjacent municipal government, and that “the FNLM First Nations have the ability to fill that hole (Federal Director 2, Interview).”

Additionally, FNLM First Nations are required to go through a significant capacity-building process, including developing a land use plan. To the extent that conflict over MDSA negotiation comes from First Nation misunderstanding of municipal concerns, supporting further participation in the FNLMA may serve to smooth intergovernmental relations. A staff member from an Intergovernmental Organization suggests the benefits of this increased capacity:

“Where a First Nation has a Land Code, first of all they have more governing capacity, they have more skills in terms of land transaction. And they, in general, have more economic development experience and understand the relationships that are needed to represent the interests of their community and also be a good neighbour at the same time and find a way to do both. (First Nation NGO 2)”
5.3. Leadership Factors

Despite the important impact of discourse and policy on First Nation-municipal relationships, much of the day-to-day work of establishing and governing an urban reserve depends on good working relationships between First Nation and municipal elected officials. The following quotation from a federal public servant indicates how relationships can make or break success stories around urban reserve development:

“And some of the main drawbacks, I think, have been the poor or non-existent relationships between First Nation and municipal governments. […] But, there have been some pretty progressive municipal politicians who have embraced it and that have tried to help push it through” (Federal Director 2, Interview).

Challenges

Lack of Relationships between Chiefs and Mayors

Unlike other First Nation and municipal intergovernmental relationships across the country, which primarily emerge between two adjacent jurisdictions, new urban reserves in the Winnipeg Metropolitan Region require Indigenous and local political leaders to create a relationship from scratch. The home reserves of Treaty 1 First Nations are typically far removed from urban areas with profitable development sites. An interview subject from a municipal non-governmental organization explained that mistrust was destabilizing First Nation-municipal relationships before the formal MDSA negotiation process even begin, and that “everybody would be hesitant to sign an agreement like that, when you already have a gap in understanding how it is going to roll out” (Municipal NGO, Interview).

A federal public servant working in the area of TLE in Manitoba was surprised at how important personal and political relationships are in the urban reserve process. He stated that he had initially assumed that relationships would be more important for First Nations leaders, but found it was just as important for municipalities. As an example, he recounted a story where a First Nation client said: “two years ago at this meeting they did this and we didn’t expect it and that threw us off, and if we can’t trust them on that, how are we going to trust them on a five year MDSA?” (Federal Director 1, Interview).

Additionally, First Nation and municipal leadership is subject to a regular election cycle, and new leaders may not be familiar with the challenges of TLE implementation. The following quotation illustrates the tension between the election cycles and intergovernmental work built on trust or personal relationships:
“They want to have a good relationship with someone that they can trust. I mean the challenge to that is that every time a chief and council or mayor and council changes, how do you maintain that? (Federal Director 1, Interview)”

All of this can create significant challenges for urban reserve development. Although several interviewees did note that federal and provincial governments have been able to provide some facilitation for the initial negotiation of an MDSA, after the agreement is signed and the reserve is converted, the local actors are left to their own devices. A federal public servant suggested that sometimes neither policy support from senior levels of government or the contents of an MDSA are helpful if there is “a non-enforceable relationship that’s just gone sour” (Federal Director 2, Interview).

**Municipalities Feel They Are Not Being Heard**

Municipalities feel left out of broader discussions of TLE implementation. Because neither individual municipalities nor their associations are seen as stakeholders in TLE implementation until a specific site is acquired or selected within their jurisdiction, a municipality may see no reason to make strategic concessions within an MDSA or to work collaboratively with a First Nation. The following quote from a provincial minister shows how local-level issues between municipalities and First Nations can be a problem, and how those issues can stem from a perceived lack of municipal recognition:

“We did a lot of work with the Association of Manitoba Municipalities, because they felt that they were being pulled in after a deal had been done between the First Nation and the Feds. And a lot of times that was true. So, the First Nation said they wanted this piece of property, the Feds and the Province would kind of approve it, and then the municipality would be told [...] but most of the conflict happens at that local level” (Provincial Minister, Interview).

While on a technical level Treaty 1 Nations are not required to engage in consultation with municipalities regarding TLE implementation, the fact remains that local governments are key stakeholders in urban reserve developments. One federal public servant explained that, for First Nations, acting in good faith towards municipalities and building relationships can be a key step in establishing and maintaining a successful urban reserve development. He argued that “they have to have those relationships established, if they really want to get stuff done” (Federal Director 2, Interview).
Opportunities

First Nation-Municipal Community Accord

The TLE Working Group – composed of representatives from the Treaty Land Entitlement Committee, the Association of Manitoba Municipalities, the TLE Implementation Monitoring Committee, Manitoba, and Canada – produced a TLE Toolkit in 2017, which included a draft Community Accord. The Accord is intended as a starting point for conversations between First Nations and municipalities, and focuses on mutual recognition of histories and jurisdiction, open dialogue, and joint working groups to “facilitate economic diversification, to protect cultural heritage resources, to promote community growth, to increase investment, to generate employment, and/or to pursue other agreed-to objectives” (TLE Working Group, 2017). A federal public servant explained that, in addition to a legally-binding service contract, First Nations and municipalities need to establish a framework for developing positive relationships, “some kind of relationship agreement that you are going to meet, you are going to talk out disputes, you are going to jointly plan” (Federal Director 2, Interview).

Comments from a staff member from a non-governmental organization representing municipal interests suggested that relationship-building, potentially through a community accord, is necessary even though “everybody still has to follow the federally approved framework,” and even that “any technical issue, you can overcome if you have leadership that is willing to work together on mutual benefits” (Municipal NGO, Interview). This suggests that, even working within the established channels of the Treaty Land Entitlement Framework Agreement and the federal Additions to Reserve Policy, First Nations and municipalities can achieve more positive outcomes through personal and professional relationship building.

Joint Planning Consultation

A First Nation is not legally required to abide by a service-providing municipality’s planning bylaws. However, as discussed above, maintaining a positive relationship with municipal elected officials, staff, and residents is key to the success of any urban reserve. Even interviewees who were generally critical of MDSA which obligate a First Nation to work under municipal planning bylaws acknowledged that some process needs to be in place to prevent conflicting land uses. A federal public servant suggested something more bilateral than the current approach to bylaw harmonization: a joint planning approach where First Nation and municipal governments acknowledge and accommodate each others interest in urban land in and around the new urban reserve. He argued that both sides should be consulting “if they are about to change
something across the street” and that, through a collaborative approach, “the expectations are set without legislating one way or another on what you are allowed or not allowed to do” (Federal Director 1, Interview).

Again, interview subjects referred to the urban reserve experience in Saskatchewan as a positive example. In Saskatchewan the status quo for MDSA is to have a First Nation operate under its own planning system, but to adopt bylaws in line with the municipal system. Even if this one-directional planning relationship appears to impose on First Nation jurisdiction, it is possible that the benefits of a successful urban reserve and a positive intergovernmental relationship outweigh a loss of autonomy. Comments from a provincial minister suggests that, for First Nations, even though they could choose to be “a little Vatican, […] the best practice is, if you want your property to thrive, you work well with the municipal government, and visa verse” (Provincial Minister, Interview).

**Ongoing First Nation-Municipal Networking**

However, interviewees also envisioned the possibility of a permanent forum for addressing First Nation-municipal issues and building political relationships. A permanent forum could provide space for communication separate from specific reserve developments and that persist beyond election cycles. A non-governmental staff member suggested that a currently ongoing series of meetings between Winnipeg Metropolitan Region and Southern Chiefs Organization leaders could be the venue for “a municipal-First Nation AGM where they can talk about beneficial development projects or issues and concerns” (First Nation NGO 1, Interview).

A permanent intergovernmental forum could help assuage local concerns regarding service payments and bylaw harmonization by providing examples and advice from peers. A federal public servant suggested that this could address some capacity issues for individual municipalities or First Nations entering the urban reserve creation process for the first time, “because lots of them, and especially a rural municipality, may not have tried this before, they don’t know where to start” (Federal Director 1, Interview).

**Advance Regional Economic Development Perspective**

Despite conflicts emerging from MDSA negotiation and urban reserve creation, many interview participants suggested the possibility of reframing the entire issue as an opportunity for regional economic development. This might make municipalities more willing to make strategic concessions to First Nation service and bylaw concerns. The following quotation by the staff of a non-governmental organization illustrates a case in Saskatchewan where awareness of the potential economic impact of urban reserve development was able to neutralize municipal resistance:
Similarly, a federal public servant explained that, for First Nations who adopt a regional cooperative perspective, their approach could change from “you are not the boss of me, you don’t have the right to tell me what to do” to “yeah, but in the long run cooperating with them is going to get us better benefits” (Federal Director 1, Interview).

For several participants, they anticipate that success stories regarding urban reserve development and First Nation-municipal relationships will reinforce themselves and lead to a greater understanding of the economic benefits of regional cooperation. Comments from a federal public servant suggested that several recently converted parcels have the possibility of acting as success stories, and he stated a goal was to be able to say: “and at the end of two years they have a functioning business that is generating jobs and income” (Federal Director 1, Interview).

“In Saskatchewan, for example, there were about four communities which wanted to put an office building in the town of Qu’Appelle. And there, because of citizen resistance, “we don’t want you in our town here.” So, they said: “fine, we’ll take our 35-million-dollar payroll and paychecks to this town down the road and we’ll build it there.” So, this guy changed his tune in a week. They said, “you know what, our town is dying, bring all of your work and your business.”” (First Nation NGO 2, Interview).
6. Discussion

This research project has attempted to answer the following research questions:

1. What factors influence the emergence of First Nation-municipal relationships during urban reserve creation?
2. What challenges and opportunities exist for supporting positive relationships between Manitoba First Nations and municipalities around new urban reserves?

Through a literature review and analysis of interview transcripts from senior policy actors, this capstone report argues that factors influencing emerging First Nation-municipal relationships in Manitoba can be usefully organized in terms of discourse, policy, and leadership. By using this framework, specific streams of academic literature can be brought to bear on the context of urban reserve creation, and in so doing help make sense of what might otherwise seem like a messy assemblage of issues.

However, the preceding analysis has also shown that these factors are not discrete. This resonates with Barry and Porter’s (2011) investigation of the “textual mediation of contact zones” between Indigenous and settler planning authority which, although most closely concerned with the role of legal planning texts, acknowledged that daily practice, text, and discourse are highly related. Accordingly, the following subsections, which discuss challenges and opportunities regarding First Nation-municipal relations, consider how discourse, policy, and leadership factors interact.

Challenges

In the context of urban TLE implementation, it appears that there is a tension between First Nation self-governance and municipal expectations regarding bylaw harmonization and service payment. This is being shaped by discourse factors, in that the notion of working government-to-government with a First Nation has not become sufficiently commonplace for municipalities; by policy factors, in that the policy and legislative framework that structures First Nation-municipal relationships leaves key points of contention up to piecemeal zero-sum negotiation; and leadership factors, in that First Nation and municipal elected officials generally have no pre-existing relationships or shared vision for regional prosperity.

Interview subjects from the federal government and from a non-governmental organization representing First Nation interests saw that extending municipal bylaw control over reserve lands was problematic (Federal Director 1, Federal Director 2, Non-Governmental 1, Interviews). This conflict over
jurisdiction is in line with what Mountjoy (1999) calls “territoriality,” which is the desire of both First Nations and municipalities to defend their own jurisdiction when entering into intergovernmental relationships. Because the rules of the game are quite open – as Dust (1997) states, urban reserve development is occurring “in absence of agreed parameters of aboriginal jurisdiction and an agreement on how aboriginal jurisdiction will co-exist with other jurisdictions” – First Nations and municipalities are engaged in a political struggle over the framing of this territorial conflict.

Attempts by Manitoba municipalities to extend bylaw control and taxation authority over urban reserve lands are reflective of what Stanger-Ross (2008) termed municipal colonialism¹, defined as “settler territorial claims that were predicated on the supposed requirements of urban vitality and development” (p. 544). When a planning consultant explained that attempting to operate an urban reserve outside of municipal bylaws would be “untenable politically,” and that First Nations should approach urban reserve development as developers, it suggested that municipalities are making claims to authority over reserve lands through the tools and language of urban planning (Planning Consultant, Interview). This resonates with Dorries’ (2012) claim that “land-use planning plays a significant but under-examined role in the erosion of Indigenous sovereignty” (p. 190).

Although “municipal colonialism” sounds like a description of active repression, the mechanisms may be subtler. If municipalities treat First Nations with urban reserve lands as developers or as municipalities, it may be because there are few scenarios where “where a municipality has to work with another entity that is a government” (Provincial Manager, Interview). This is in line with findings that settlers continue to dominate cultural, legal, and political institutions in Canadian cities more by omission than by action (Moore, Walker, and Skelton, 2011, Mohammed et al, 2018). Mohammed et al (2018) argue that municipal planning activities that do not engage with Indigenous peoples as “figures of sovereignty” can lead to the “reproduction of structural violence through the unequal distribution of material and discursive power and resources” (p. 292).

The pressure for First Nations to adopt municipal-like or developer-like strategies when dealing with municipal government resonates with Porter and Barry’s (2015) critique of planning policy British Columbia, which they argued frames Indigenous rights and authority as constrained to reserve or treaty settlement lands and as fitting neatly into the “administrative and spatial orders and norms already operating within the planning system (p. 34).” They argued that First Nation-municipal relationships display

¹ The idea of establishing a link between urban reserve development in Manitoba and Stanger-Ross’ concept of municipal colonialism came from Dr. Janice Barry (publication forthcoming)
“a radically different discourse from the commitments to reconcile and allow for the coexistence of different forms of political authority” (Porter & Barry, 2015, p. 35) which are increasingly commonplace in Canadian Supreme Court decisions and First Nation-provincial relationships. McLeod et al (2017) made similar critiques of the provincial planning system in Ontario.

This critique of First Nation-municipal relationships that push First Nations to adopt municipally-approved strategies or roles in order to be recognized suggests a close reading of Glen Coulthard’s (2007) article “Subjects of Empire: Indigenous Peoples and the ‘Politics of Recognition’ in Canada.” He argued that neo-colonial relationships in Canada are maintained and reproduced as Indigenous peoples take on and identify with “the profoundly asymmetrical and non-reciprocal forms of recognition either imposed on or granted to them by the colonial state and society (p. 439).” This aligns with Tomiak’s (2017) critique of urban TLE implementation, which argued that the benefits of urban reserve development occur only “within narrow parameters of state recognition, leaving the fundamental colonialist fiction of Crown sovereignty and the dynamics of Indigenous dispossession and marginalization intact” (p. 934).

Opportunities

If urban reserve creation and emerging First Nation-municipal planning relationships are to support Canadian commitments to reconciliation, planners and elected officials should act with an understanding of the “split personality” of planning with Indigenous peoples (Hibbard, Lane, & Rasmussen, 2008). Understanding the history and potential of planning as a tool for either dispossession or emancipation provides a key theoretical frame through which to formulate policy responses. This is in line with the message of the Canadian Institute of Planners’ (2019) Policy Statement on Planning Practice and Reconciliation, which states that professional planners in Canada must “understand the rights of Indigenous people and how they relate to planning and governance” and “acknowledge the role of historic planning practices in the mistreatment of Indigenous peoples” (p. 2).

To “incorporate reconciliation into their planning practice” (Canadian Institute of Planners, 2019, p. 2), professional planners will need to develop new tools and inter-cultural competencies (Howitt et al, 2013). Mainstream stakeholder-oriented planning principles provide useful strategies for professionals faced with issues of equity and cultural difference (Arnstein, 1969, Toews, 2013). However, claims made upon urban land by First Nations are so deeply unsettling that they call into question the toolkit of a planner working within the constraints of liberal democracy (Barry, 2016).

Porter and Barry (2016) articulate the ramifications of reconciling Indigenous and settler authorities over urban land when they argue that, “where Indigenous people are recognized but in doing so made
subject to governmentalities and logics that serve existing orders, then those forms of recognition should be called as they are: regressive, disposessory, the antithesis of justice” (p. 187). For some planners, fulfilling both broad democratic responsibilities towards the “public interest” (Canadian Institute of Planners, 2016) and specific, historically-contingent responsibilities regarding reconciliation may be an incommensurable task, given that “the public remains divided on whether Aboriginal peoples have unique rights and status rights and status as first inhabitants or are just like other cultural or ethnic groups in Canadian society” (Environics, 2016, p. 5).

Watson (2003) presents the useful concept of “conflicting rationalities” when she argues that even contemporary progressive approaches to planning theory do not recognize “just how deep difference can be, and how often planners find themselves facing situations of fundamentally different and conflicting rationalities” (p. 405). When contemplating a just resolution of service payment and bylaw harmonization, competing definitions of fairness mean that no one solution easily satisfies all parties. In this context does “fair” mean treating First Nation government the same as any developer? Does it mean treating the authorities of First Nation and local government as equal? Does it, perhaps, mean acknowledging the self-governing authority of First Nation government and the supporting the potential of urban reserve development to act as a tool towards economic self-governance? There appears to be no objective answer to this question.

The concept of “wicked problems,” first applied to social planning by Horst Rittel and Melvin Webber in their 1973 article “Dilemmas in a General Theory of Planning,” provides useful theoretical insights into addressing problems with multiple, conflicting rationalities at play. Problems which are wicked), lack consensus on the desired end-goals of any policy intervention, and have multiple competing problem definitions, each with corresponding implications for policy development (Rittel & Webber, 1973).

Roberts (2000) identified three strategies for addressing wicked problems: authoritative strategies, competitive strategies, and collaborative strategies. The aforementioned power imbalances and political sensitivities rule out authoritative or competitive strategies in the context of First Nation-municipal planning relationships in Canada. However, Roberts’ (2000) conception of collaborative strategies, which seek to “enlarge the pie for all parties involved” rather than “play a zero-sum game that seeks to distribute pie-shares based on winners and losers” (p. 6), shows promise. Drawing from an analysis of stakeholder collaboration in a post-conflict recovery context, Roberts (2000) argued that collaborative approaches to solving wicked problems should not attempt to simplify the problem by imposing external definitions, but instead should “get the whole system in the room” and work towards shared understandings in “a self-
organizing, complex adaptive system that co-evolves as stakeholders meet, interact, and inform one another’s actions” (p. 16).

The concept of wicked problems was previously applied to Indigenous-settler relations in Australia by Webb (2016) in her analysis of Native Title Corporations and by Sherrer & Doohan (2013) in their analysis of tourism on Traditional Owner lands. Each of these authors recommended collaborative approaches as key tools for resolving wicked problems concerning the reconciliation of Indigenous and settler rights and expectations. All of this resonates with Porter and Barry’s (2016) claim that land-use planning can only expand to accommodate the knowledge and traditions of Indigenous peoples through ongoing intercultural engagement which “provides time and capacity to have those difficult conversations about how to translate values between two coexisting domains” (p. 179).

On March 1st, 2019, the Southern Chiefs Organization and the Winnipeg Metropolitan Region signed Forging the Partnership: Intergovernmental Memorandum of Understanding, after several months of meeting under the Collaborative Leadership Initiative. This document acknowledges the “evolving government-to-government relationship” between municipalities and First Nations in southern Manitoba, and explicitly frames the relationship in “the framework for reconciliation set out in the United Nations Declaration on the Rights of Indigenous Peoples and the Calls to Action of the Truth and Reconciliation Commission” (Southern Chiefs Organization & Winnipeg Metropolitan Region, 2019, p. 2). The stated purpose of this MOU is to enhance intergovernmental relationships and support regional cooperation on, among other things: economic development, service sharing, infrastructure, and Treaty Land Entitlement. The parties committed to “a minimum of two meetings a year between the Mayors, Reeves, and Chiefs of the First Nations and the Municipalities (Southern Chiefs Organization & Winnipeg Metropolitan Region, 2019, p. 3).

The concept of a regional forum aligns with the responses of interviewees and the findings of academics looking at Indigenous-local relationships. A regional forum has the capacity to support the staff and elected officials of individual municipalities or First Nations entering the urban reserve creation process for the first time, “because lots of them, and especially a rural municipality, may not have tried this before, they don’t know where to start” (Federal Director 1, Interview). Bullock (2011) found that, in the context of regional forestry development in Ontario, because regional First Nations and municipalities had little history of interaction, “a forum for direct interaction and open dialogue between First Nation and non-First Nation leadership was seriously needed in the region to familiarize the long-separated communities” (Bullock, 2011, p. 86).
Although this initiative appears to most directly address barriers related to leadership factors, it also appears to impact both discourse and policy factors. It is clear from the language of the MOU that the discourses of working government-to-government and of supporting Canadian commitments to reconciliation are penetrating the context of First Nation-municipal relationships in southern Manitoba. Additionally, the Collaborative Leadership initiative is based off of the principles of collaborative consent, which involves governments working in areas of “overlapping or complementary authorities or jurisdiction, even if they don’t agree with each other’s views about the scope of their jurisdictions” (Phare Law & North Raven, 2016, p. 5). In the context of urban reserve creation, this approach allows First Nations and municipalities to bypass the unclear policy and legislative landscape and instead work towards consensus-based policy solutions through a process of “continually defining interests and goals, articulating assumptions, exploring options, reaching agreement, and then circling back to refine goals, revisit assumptions, and check progress” (Phare Law & North Raven, 2016, p. 5).

In closing, based on the perspectives of senior-level policy actors in TLE implementation and the small body of literature on Indigenous-local intergovernmental relationships, it appears that the Collaborative Leadership initiative currently being spearheaded by the Southern Chiefs Organization and the Winnipeg Metropolitan Region provides a model for First Nation-municipal collaboration which addresses many of the common barriers to positive intergovernmental relations.

**Generalizability of Findings**

This study can inform academics and professionals working on issues regarding Indigenous-local intergovernmental relationships in two ways:

First, the Discourse-Policy-Leadership theoretical framework may be a more generally useful tool. As shown in the preceding literature review, Indigenous-local intergovernmental relationships are only recently beginning to emerge as an area of research. Due to the international and context-specific nature of this field, much of the literature consists of case studies (see Wood, 2003, Zaferatos, 2004, Alcantara & Nelles, 2009, Bullock, 2011) without a shared methodological or theoretical framework to facilitate comparative work (for useful exceptions to this, see Porter & Barry, 2015, Nelles & Alcantara, 2014). Academics or practitioners might use the Discourse-Policy-Leadership framework to conduct comparative research on the differences and similarities of factors shaping Indigenous-local intergovernmental relations across Canada and internationally.

Second, the specific findings of this study could provide insight for Indigenous-local intergovernmental relationships in other contexts. The specific gaps and challenges relating to discourse,
policy, and leadership factors which are aggravating local-level conflicts and delaying Treaty Land Entitlement implementation in Manitoba may resonate with municipal or Indigenous governments in other areas of Canada where land claims are being settled. The insights of senior-level policy actors in Manitoba TLE implementation regarding possible tools or strategies for addressing these issues may also suggest possible courses of action for policy-makers elsewhere.

Relevance for Professional Planning Practice

The Canadian Institute of Planners’ (CIP) 2019 Policy Statement on Planning Practice and Reconciliation (the Reconciliation Policy) acknowledges a clear link between the work of professional planners and national conversations around reconciliation with Indigenous peoples and states that “planners have a responsibility to incorporate reconciliation into their planning practice” (p. 2). The CIP Reconciliation Policy calls on professional planners in Canada to recognize a Indigenous rights, to uphold Indigenous ways of planning, to understand the role of planning practices in colonialism, and to respond to the TRC Calls to Action.

The findings of this capstone report shed light on the ways in which gaps relating to discourse, policy, and leadership factors can make this substantial commitment to development more positive relationships with Indigenous peoples a difficult, and possibly wicked, problem. By pulling apart the factors that are shaping Indigenous-local intergovernmental relationships in a region, professional planners can more precisely locate the locus of strained relationships and better tailor their response. For example, if there is a deep divide between the staff and elected official of Indigenous and local governments in a scenario, it may be insufficient to simply impose a new policy; likewise, if outdated or misguided policy is the source of conflict, relationship-building may prove ineffective.

Additionally, by looking at the Collaborative Leadership Initiative between the Southern Chiefs Organization and the Association of Manitoba Municipalities, this capstone report provides an illustrative case of how First Nation and municipal governments are responding to the TRC calls to action and attempting to address local-level conflicts. This initiative resonates with the CIP Reconciliation Policy’s call for professional planners to develop collaborative approaches “built on relationships of mutual respect, trust, dialogue, and meaningful engagement” (Canadian Institute of Planners, 2019, p. 2). A key lesson from this initiative for First Nations or municipalities in Canada who are grappling with local-level conflicts during the negotiation or implementation of land claims is that developing higher-level principles through a regional process can serve to move the conversation from win-lose to win-win.
Limitations and Suggestions for Further Research

As discussed in the Methods section, the key limitation of this capstone project is the disconnect between the research questions and the data collection methods. Although the research questions for this project were developed with the insights of the data set in mind (the researcher gained this close knowledge through conducting and transcribing the interview data as part of a research assistant position), the interview questions and interviewee selection criteria were nonetheless tailored to a different set of research questions.

This project would have been improved significantly if the interview questions had explicitly asked interviewees to list the factors that they saw as influencing the emergence of First Nation-municipal relationships through urban reserve development, rather than interpreting the relevant factors through the existing data set. In this case, the interview questions could have also been changed from interview to interview in order to draw out specifics and confirm or question emerging themes in the data.

The next steps in terms of directly related research that this project suggests is a second round of interviews with First Nation and municipal staff and elected officials in Manitoba. The major themes identified through this capstone project should be tested against the experience of on-the-ground actors engaged in urban reserve development. These local-level interviews could solidify or discredit the working hypothesis of this project: “First Nation-municipal relationships around urban reserve creation in Manitoba are being shaped by factors relating to discourse, policy, and leadership”.

Beyond the context of Treaty Land Entitlement implementation in Manitoba, this capstone project also suggests a program of comparative research on Indigenous-local intergovernmental relationships in Canada. A comparative project could serve to pull determine which aspects of this capstone project’s findings are highly context specific and which are relevant for Indigenous-local intergovernmental relationships more broadly. Possible case study regions for comparative work in Canada are Yukon and BC, where comprehensive land claims are catalyzing new relationships between many different individual First Nations and municipalities.
7. Conclusion

Motivated by a desire to support professional planners in realizing Canadian commitments to reconciliation at the local level, this capstone report has attempted to shed light on emerging relationships between First Nations and municipalities in Manitoba, which are being catalyzed by the implementation of Treaty Land Entitlement agreements. The findings of this report should be informative to professionals and elected officials engaged in the specific work of urban reserve creation in Manitoba, as well as to academics working at the under-studied interface of Indigenous and local planning authorities.

The primary academic work of this report has been to produce a conceptual model of factors which shape Indigenous-local intergovernmental relationships and to use a qualitative analysis of a dataset of interview transcripts from senior-level policy actors in Manitoba Treaty Land Entitlement implementation to investigate how these factors are influencing First Nation-municipal relationships around urban reserves in Manitoba. Additionally, the preceding Results section has linked findings related to barriers and opportunities for supporting First Nation-municipal relations to streams of critical planning literature.

In the end, this capstone report has developed no simple answers to local-level conflict over urban reserves in Manitoba, nor any universal theory of Indigenous-local intergovernmental relations. However, hopefully, it has contributed to ongoing professional and academic conversations and suggested fruitful new sensitivities or avenues of analysis for further investigation of this subject.
8. References


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