

# Executive Summary

## Impact and Benefit Agreements: The Role of Negotiated Agreements in the Creation of Collaborative Planning in Resource Development

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## Impact and Benefit Agreements - Background

Over the past twenty five years exploration and development of northern Canadian mineral and petroleum resources has steadily grown. With predictions of continued growth in resource development, there is mounting concern regarding the associated negative environmental and social impacts. In particular, there are concerns that the impacts of increased development will be felt acutely by Aboriginal and Northern communities. While the duty to consult and accommodate and public engagement via environmental assessment (EA) do require for consultation to occur, they do not specify engagement outcomes, and typically do not require follow up to ensure agreements are honoured. As a result, benefits are often not distributed appropriately and the existence of 'poverty in the midst of resource abundance' continues in many Canadian Aboriginal communities. In response to these failures as well as environmental concerns, there has been increased political contention in resource development. Consequentially, there is growing recognition of the importance in obtaining community support (i.e. 'social license') for individual development projects. Bilateral private negotiations between private industries and potentially affected Aboriginal communities, also known as Impact and Benefit Agreements (IBAs), have been progressively used to obtain this highly valued 'social license'. Due to their recent emergence as well as the variability of their outcomes, many questions surrounding IBAs remain, including how they are used in conjunction with other public engagement processes, and their contribution, if any, to collaborative land-use planning processes. This executive summary outlines the findings of my masters' major research paper which presents a current state of knowledge regarding the interactions and effectiveness of IBAs in the creation and facilitation of collaborative planning.

### Major Themes

Four major themes were identified through an in-depth literature review and interviews with 11 IBA practitioners. These themes were researched with the objective of identifying the ways IBAs contribute to or detract from the creation of collaborative planning processes. Below are the summarized findings in relation to each major theme.

#### **1. The Relationship between IBAs and the Duty to Consult and Accommodate**

Evidence gathered through this research suggests that IBAs are *de facto* replacing the Crown's role in consultation and accommodation processes as the Crown typically conducts consultation once IBAs have already occurred. While the Crown still consults the community, private industry is seen as doing all the 'heavy lifting' as they are engaging communities first with the intention of obtaining a 'social license' to operate. It can be speculated that as a result of IBA processes there are less opportunities for collaboration via meaningful engagement between Aboriginal communities and the Crown.



## Major Themes cont.

### 2. IBA Effectiveness

This research suggests that IBA negotiation processes have been effective in the creation of collaborative planning as they generate opportunities for collaboration through trust building, enhanced communication and sharing of risks and benefits. For industry, IBAs offer protection against interrupted construction and operation timelines resulting from unaddressed political or social contention; as well, successful IBAs help reinforce a positive corporate image which is easily marketable. For communities, IBAs provide an opportunity to have direct discussions with industry regarding potential impacts of a project and the most appropriate accommodation and mitigation measures. Furthermore, IBAs reinforce Aboriginal autonomy in decision-making, and where implementation occurs; IBAs are seen to relieve capacity strains through delivery of benefits to the communities. While the outcomes of IBAs are variable, they are frequently used as they initiate a framework for on-going dialogue which carries onto EA and duty to consult engagement activities.

### 3. Collaborative Negotiation Processes and Implementation of Agreements

The varied outcomes of negotiation processes in Aboriginal communities are considered to be a result of interactions between several unique factors. These factors include the prevalence of multiple actors with varying levels of technical and governance capacity, as well as changing political and economic climates in Aboriginal communities. Both the literature and research participants suggested that through increased development of governance and bureaucratic capacity, Aboriginal communities will be better equipped to negotiate in a collaborative manner with industry.

Unsuccessful implementation of IBAs was noted as a major failure in typical IBA negotiations. Lengthy construction timelines, capacity strains and a focus on immediate financial benefits were all forwarded as causes for implementation failure. Although an obvious point, without implementation of IBAs, the transfer of benefits from industry to Aboriginal communities cannot occur. As implementation remains a major challenge, IBA implementation committees (which oversee IBAs from negotiation to implementation) have been forwarded as a possible solution.

### 4. Capacity Development via IBAs

IBAs present significant potential for capacity development resulting from the opportunity to negotiate the type and amount of benefits related with the project. While these negotiation processes require access to expertise (and as such might be limited by existing capacity), key informants noted that they do provide opportunities for communities to shape the type of capacity (trade skills, governance skills, technical skills) that is developed resulting from a project. Consequentially, it can be speculated that capacity which is developed as a result of IBA processes, contributes to the creation and facilitation of collaborative planning processes.



## The Role of IBAs in Collaborative Planning

In its simplest form, collaborative planning has the potential to empower communities in shaping the procedures, processes, and agendas that influence development in their region. This research found that the communities who benefited the most from IBA processes were those who worked in collaboration with other potentially affected communities. In addition, it was noted that communities with existing negotiation capacity who have secured some form of authority over their traditional lands largely benefited from IBA negotiations. Observers of IBA processes remarked that through collaboration both a community's capacity and the ability to secure land rights are increased due to pooled resources and shared regional authority. With this in mind, it is important to note that IBAs are intentioned to only serve as a tool within a larger collaborative planning framework and as such they possess inherent limitations or boundaries to what they can affect.

### Further Research

#### The Utility of IBAs in CEA Processes

The need for cumulative effects assessment (CEA) was highlighted by multiple research participants and identified as a 'gap area' where much research is needed. Overall, key informants identified the need for CEA and expressed doubt regarding the achievement of sustainable resource development without an impact assessment method that takes into account multiple projects over longer timeframes. IBAs were suggested by one key informant as a potential consultation mechanism for CEAs as they are flexible enough to consider both socio-economic and environmental concerns. While largely a theoretical consideration, further research into the utility of IBAs in the creation of collaborative CEA processes could yield unique insights.



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## Conclusion

While more research is needed to determine overall IBA effectiveness, my research indicates that IBAs are an effective tool for collaborative planning as they build trust, promote direct communication between Aboriginal and industry stakeholders and facilitate capacity development. While there was no consensus that ongoing collaboration between communities is occurring as a result of IBAs, regional IBAs and collaborative approaches to planning were identified as beneficial and contributed to better IBA outcomes.

Although my research suggests that IBAs are in a *de facto* manner replacing the Crown's role in consultation and accommodation processes, it is important to note the variability in IBA negotiations. Resulting from the confluence of unique political, social and economic factors, IBA outcomes and timelines are difficult to predict. As consultation timelines for IBAs, EAs and the duty to consult differ from project to project, the ways these processes interact with each other changes with each project. With this being said, participants noted the over-arching benefits of early engagement with Aboriginal communities in well-intentioned and meaningful discussions.

Overall, my research suggests that IBAs present significant potential for capacity development and are an effective planning tool that can be used within larger collaborative planning processes. While implementation failure and capacity gaps present substantial challenges; IBAs possess significant potential for collaboration resulting from the opportunity for Aboriginal communities to directly negotiate the impacts and benefits of a particular resource development project.

For more information on my research or to obtain a copy of my major research paper please contact me at [adamwright4@gmail.com](mailto:adamwright4@gmail.com).

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