



Opportunities Arising from Impact Benefit Agreements

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Where do Impact Benefit Agreements (IBAs) come from?

- Arise primarily out of the duty to consult and accommodate context
- Private business and industry have no *legal* duty to consult, by it makes a lot of sense for them to do so anyway:

... it is now becoming clear that while the obligation to consult resides with government, not private business, it will be in the best interest of industry to corporate leaders to get with the agenda.





Why should private business and industry get involved in consultation and accommodation?

- Government might require as part of permitting / licencing process (delegation of Crown's duty)
- It makes good business sense:
 - Avoids delays in project, possible legal battles, lawyers fees
 - Fosters positive relationships with First Nations community
 - Capitalize on First Nation labour force
 - Encourage First Nation investment (financial , resources, or land)





Economic opportunities that can be part of an IBA

- Employment opportunities
- Training and education opportunities
- Scholarships
- Capacity building
- Community development (infrastructure, social programs, language programs, etc.)
- Contract and business opportunities
- Co-management, joint venture or partnership opportunities





Other benefits that can be part of an IBA

- Environmental protection and mitigation measures
- Health and wellness measures and monitoring
- Process for gathering and respecting traditional knowledge
- Ongoing research into First Nation's culture, history, use and occupation, and socio-economic status
- Cross-cultural awareness and sensitivity training for project employees





Things to watch out for when getting involved in an IBA

- Pressure by proponent to sign so that project deadlines can be met
- Not enough time to properly study environmental, health, economic, social and legal impacts of project
- Technical team should be formed to study all possible impacts (lawyers, engineers, biologist, traditional users)
- Traditional Knowledge and Use Study should be done before entering IBA





Things to watch out for when getting involved in an IBA (cont'd)

- Before signing an IBA, there should be a prior agreement to negotiate the IBA that includes:
 - Funding by proponent for hiring technical people and conducting studies of impacts of project
 - Reasonable timelines for conducting studies and negotiations






Things to watch out for when getting involved in an IBA (cont'd)

- An IBA should be balanced:
 - Not just focused on economic opportunities, but consider environmental, health and social needs of community as well.
 - Some First Nations sign 3 agreements: Impact Benefits, Environmental and Socio-Economic Agreements





Things to watch out for when getting involved in an IBA (cont'd)

- If the project is in phases, with the possibility of it having different impacts (environmental, social, health, economic) at different points:
 - IBA should foresee possibility for further negotiation if circumstances change
- Generally, should include clause that agreement will be reviewed and reassessed after a period of time (e.g., 5 years)





Final points to remember when getting involved in an IBA

- First Nation should not feel rushed or bullied into accepting first thing proponent offers – litigation and direct action, are ways to push back
- There needs to a team with expertise to assess full impacts (environmental, social, economic, health, legal, etc.) of the project – cutting and pasting from another First Nation’s IBA on a different project is not a good idea





Questions?



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