



IMPACT BENEFIT AGREEMENTS: KEY INSIGHTS FROM FIRST NATIONS',  
GOVERNMENT AND INDUSTRY LEADERS

**Kim Baird, Chris G. Buse, Kevin Hanna, Richard Krehbiel, Karen Ogen**

**Prepared for First Nations Liquefied Natural Gas Alliance**

## INTRODUCTION AND BACKGROUND

Across British Columbia and Canada many First Nations communities and their governments are working to anticipate and manage the impacts of resource development while generating economic opportunities from proposed projects. Impact benefit agreements (IBAs) are one tool that can be used to help define opportunities, frame the relationships between companies and communities, and ensure benefits for Indigenous communities flow from projects in their territories.

This report supports the work of the First Nations LNG Alliance (FNLNGA), and meets a need identified by the Alliance to provide guidance on the design and implementation of impact benefit agreements. The project addresses four objectives:

1. Understand how *success* is understood from multiple negotiating parties (e.g. First Nations community leaders, government officials, and industry affiliates) involved in IBA negotiations;
2. Document key challenges to IBA implementation from multiple perspectives;
3. Ground-truth previously established best practices in IBA through multiple perspectives in the context of the liquefied natural gas (LNG) industry, and
4. Share key insights and provide principles to support First Nations communities in preparing for and implementing IBAs.

For in-depth information on IBAs, readers can consult best-practice guidance documents such as the *guide to benefit sharing agreements in BC*,<sup>1</sup> the *IBA Community Toolkit*,<sup>2</sup> a *review of critical issues pertaining to IBAs and their implementation*,<sup>3</sup> a *systematic review of key aspects of IBA practice*,<sup>4</sup> and *established best-practice guidance on financing mechanisms and associated fiscal instruments*.<sup>5,6</sup>

What can be missing from academic work on IBAs is the advice and experience from those who directly involved in creating or implementing agreements. This report outlines the findings from three focus groups, which help to understand the IBA process from the perspectives of First Nations leadership, government, and industry. Hearing from those involved in these sectors can provide information and perspectives that can help First Nations leaders interested in advancing IBAs in their own communities. They can also be beneficial for articulating principles that can be deployed to strengthen the negotiation and implementation of IBAs.

In addition to presenting results of the focus groups, the report [1] introduces the concept of IBAs, including their legal foundations and typical provisions that are negotiated; [2] outlines a literature review looking at best practices in IBA implementation; and [3] describes results from a focus group approach that was used to understand and assess key indicators of success of IBAs related to BC's emerging liquefied natural gas industry. The results are discussed and key principles are outlined to help inform future IBA negotiation and implementation in the province's LNG sector.

# INTRODUCING IBAs: PROCESSES AND PROVISIONS

## What are IBAs?

An IBA is a legally binding contract between a community that may be impacted by a project and the developer of that project (usually a company, but possibly a government organization), with the goal of sharing the benefits of that project as a means to redress its impacts on local communities.<sup>7</sup> IBA is one term to describe these types of agreements. In practice, there are more than 25 related terms that conceptualize IBAs, including, mutual benefit agreements, benefit sharing agreements, accommodation agreements, project support agreements, and community benefits agreements, among others.<sup>3</sup> Central to each of these is a recognition that benefits may be immediately provided (e.g. the direct transfer of resource revenues from a proponent to a community), or come in the form of long-term legacies for communities (e.g. community infrastructure, job-training programs, procurement opportunities or other benefits monetary and non-monetary).

Regardless of what these agreements are called, IBAs are designed to reach mutually beneficial negotiated agreements that aim to secure project certainty for governments and/or proponents, while ensuring benefits are shared among communities, risks or negative impacts are mitigated, and the interests of communities and proponents are acknowledged. IBAs are increasingly becoming a common means of acquiring community consent (particularly among Indigenous rights-holders) for a particular project or economic development activity from an affected community.<sup>8</sup> They are typically structured according to four steps:

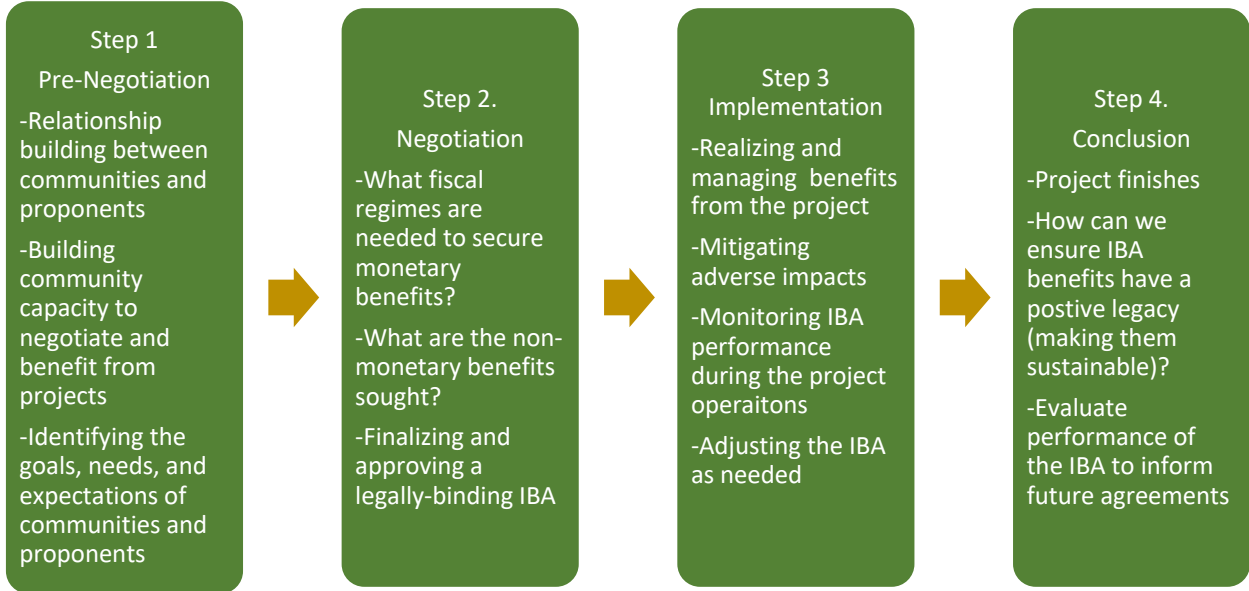


Figure 1. Four steps of the IBA process (adapted for this report <sup>5</sup>)

Creating IBAs between First Nations and industry is about building a working relationship between communities and proponents, defining approaches to collaboration, articulating interests and needs, establishing a framework for sharing benefits, and understanding the impacts of projects.

## Legal foundations for IBAs in Canada

IBAs are rooted in part in Canada's duty of consultation and accommodation, and act as a response to the underlying issue of Indigenous (i.e. Aboriginal) rights and title. IBAs emerged in the absence of formal laws around sharing resource revenues and generating positive benefits for communities, and the need for proponents to understand expectations, identify respective interests, and account for any risks associated with a project.

First Nations and Indigenous rights to traditional territories and natural resources are protected under section 35 of Canada's *Constitution Act, 1982* which recognizes and affirms "the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada". To reconcile those rights with the Crown's obligation to govern for all interests, the Supreme Court of Canada has stated governments must consult with and where appropriate, accommodate First Nations whose rights are impacted by development activities (see *Haida Nation v. British Columbia [(Minister of Forests)]*, 2004 and *Tsilhqot'in Nation v. British Columbia*, 2014).

While it is a legal requirement for the government to consult with Indigenous rightsholders about related development activities, there is no clear legal duty for companies to consult or accommodate unless the Crown has specifically delegated some of the responsibility to the company. However, many companies undertake consultations and enter into IBAs with Indigenous communities as matters of good business practice to secure 'social license' to operate as a form of explicit consent for a project to operate on Indigenous territory.<sup>1</sup>

Significant other judicial developments that contribute to the legal foundation of IBAs in Canada have occurred in recent years. In July 2021 the Federal Court of Canada ruled that an Alberta First Nation's economic interests in an impact benefit agreement with a mining company were "closely related to" and "derivative from Aboriginal and Treaty rights", and therefore triggered the Crown's duty to consult about its decision to cancel the project. The Court firmly rejected the federal government's arguments that Aboriginal and treaty rights related only to traditional resource uses and the apparent assumption that First Nations necessarily opposed industrial development (*Ermineskin Cree Nation v. Canada [Environment and Climate Change]*, 2021). See Box 1 for the list of court cases noted in this section.

And in October 2021, the Alberta Court of Appeal similarly concluded that positive economic impacts for First Nations, in this case an equity participation agreement in an electrical transmission line, are relevant factors to be considered in evaluating the public interest. (*AltaLink Management Ltd v. Alberta [Utilities Commission]*, 2021).

More recently, the Supreme Court of Canada refused leave to appeal a trio of cases in which a mining project was rejected by the Crown regulatory agency on environmental impact grounds. Again, the mine proponent had entered into impact benefit agreements with two First Nations who argued lack of consultation in the Crown's decision; however, the courts determined that those interests had been properly considered in the decision-making process. In other words, First Nation socioeconomic interests were recognized in the consultation process, even though the decision was ultimately against those interests (*Piikani Nation v. Alberta Energy Regulator*, 2022; *Benga Mining Limited v. Alberta Energy Regulator, et al.*, 2022; *Stoney Nakoda Nations v. Alberta Energy Regulator, et al.*, 2022).

It is evident that the evolving law of Crown consultation is forcing governments to consider the positive impacts of First Nations' participation in economic development as an alternative to the assumption that First Nations will normally oppose development.

### Relationship of IBAs to the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission Calls to Action

There are several other notable developments relevant to IBAs beyond Canadian legal protocols for Indigenous communities to exercise self-determination over their lands. The [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP) is a legally non-binding resolution passed by the United Nations in 2007, and in 2019, British Columbia became the first Canadian jurisdiction to incorporate UNDRIP into law through an act (the [Declaration of Rights of Indigenous Peoples Act \(DRIPA\)](#)). The DRIPA requires the provincial government to prepare and implement an action plan to achieve UNDRIP objectives as outlined by the United Nations, but with a specific focus on coordinating laws within BC.<sup>9</sup> In terms of the relevance of UNDRIP to IBAs, Article 32(1) recognizes 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" and Article 32(2) stipulates that governments ought to "consult and cooperate in good faith...in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources".

UNDRIP recognizes the theme of indigenous economic development interests in various other applicable provisions. For example, Article 5 provides in part that "Indigenous peoples have the right to maintain and strengthen their distinct ... economic ... institutions, while retaining their right to participate fully, if they so choose, in the ... economic ... life of the State." Article 20(1) enshrines "the right to maintain and develop ... economic ... institutions, ... and to engage freely in all their traditional and other economic activities" with a promise of "just and fair redress" if deprived of those rights. Article 21(1) provides for the "right, without discrimination, to the improvement of their economic and social conditions" and Article 21(2) would obligate states to "take effective measures and, where appropriate, special measures to ensure continuing improvement" of Indigenous economic and social conditions. Article 23 frames "the right to determine and develop priorities and strategies for exercising their right to development".

IBAs are also relevant to the ‘Calls to Action’ put forward by the Truth and Reconciliation Commission of Canada. In particular, Actions 42 and 43 call upon all levels of government to fully adopt and implement UNDRIP, and Action 92 calls to adopt UNDRIP as a “reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources”. This necessarily includes issues of meaningful consultation; obtaining free, prior and informed consent for projects; supporting Indigenous people to have equitable access to jobs and training while also ensuring communities gain long-term sustainable benefits from project development and operation; and that opportunities are provided to educate management and staff (i.e. through intercultural competency training, anti-racism, and human rights-based approaches) on the history of Indigenous peoples in Canada, including the history of residential schools.<sup>10</sup>

### What can First Nations and Indigenous Communities Gain from IBAs?

IBAs typically confer monetary benefits from a particular project with an impacted community, but they may be structured to provide any number of other incentives<sup>11–13</sup>. IBAs present unique opportunities for First Nations communities to influence project development during the planning (rather than construction and operation) phases. In Canada, IBAs are on the whole between industry and Indigenous organizations (governing bodies). But because they are typically legal agreements, they can provide opportunities to enhance relationships with the Crown and/or a given project proponent—particularly as it relates to conferring recognition of ownership and/or political jurisdiction over activities taking place on traditional territory—although some authors question how this has been achieved through IBAs<sup>14–19</sup>. Nonetheless, IBAs can structure a shared decision-making process for governing or operating a project, and articulating interests and sharing benefits, and provide the framework for Indigenous participation and consent.

### What types of provisions may be covered by IBAs?

IBAs can cover anything relevant to a project and its impacts or benefits for a community<sup>1,3,5</sup>. These can include, but are not limited to:

- **Issues related to project development**
  - Defining the scope of a given economic development project
  - Identifying and building a relationship among negotiating parties
  - Project governance (including establishing regular communications and associated confidentiality provisions, community participation in decision-making and dispute resolution mechanisms, and management of funds) to enhance project certainty
  - Socio-economic baseline studies conducted pre and post project

- **Financial considerations**
  - Revenue sharing and/or payment schedules for certain development milestones
  - Compensation or financial accommodation (e.g. for adverse impacts to harvesting/traditional land use, and/or Indigenous/public access limitations to land)
  - Land acquisitions, licenses, permits and leases
  - Business opportunities and business development (e.g. local procurement policies; creation of new corporations) with requests for proposals and direct awards/contracts aimed toward the Nation(s) whose territory the industry is working within, or the project is situated
  
- **Community capacity building for social and cultural impact**
  - Employment agreements and targets for impacted community members
  - Education and job-specific training agreements
  - Provisions of scholarships, bursaries or training funds
  - Infrastructure construction (e.g. schools, healthcare or community gathering places/recreation facilities)
  - Contributions to community events
  - Terms for protection and use of traditional knowledge
  - Cultural safety training requirement for employees
  
- **Environmental and traditional use protections**
  - Ensuring Indigenous and public access to lands affected by a project
  - Tailoring project activities to seasonal uses by Indigenous communities
  - Land-use permits and related mitigation measures in the event of adverse environmental impacts
  - Commissioning research studies to define environmental monitoring and management needs for the lifecycle of the project
  - *Traditional Land Use and Occupancy Studies* completed by nation funded by industry
  - Outlining reporting and compliance measures for environmental protection
  - Protecting archeological sites

While the list above does not cover everything that can come up, it does provide ideas about the provisions that could be negotiated in an IBA process. These components can apply to any and all aspects of the development—starting from the earliest planning and pre-construction, to implementation/operation, and right through to the wind down or decommissioning of a project. IBAs should anticipate and cover the entire lifespan of the project.

## Leading Practices

A key question posed in this analysis is how **‘success’** can be defined or understood in the context of IBAs, and from whose perspective? To date, studies of best practice implementation

of IBAs have been limited due to non-disclosure agreements and a lack of transparency around legal agreements, especially between corporate entities and communities.<sup>13,16,20</sup> It has also been argued that the lack of transparency and use of non-disclosure agreements can stifle the ability of Indigenous communities to discuss and compare ‘fair’ agreements, which may prevent a deeper understanding of the long-term social and economic benefits that may be provided by any given project.<sup>14</sup>

Previous studies have documented concerns about the degree to which Indigenous communities goals are met if existing power differences are maintained or reinforced in IBAs in ways that do not enable Indigenous community members to play an active role in achieving desired benefits.<sup>14,15,21,22</sup> There is also an emerging literature that has sought to consolidate key issues, and best practices in IBAs that may speak to measures of success and/or the outcomes of IBAs as negotiated.

An analysis of mining revenue sharing among Aboriginal communities in Australia found that between theoretical and applied literatures, it is unclear if mineral revenues have meaningfully contributed to social and economic development for communities.<sup>23</sup> This led the authors to identify four key considerations that are likely to determine the impacts of revenue sharing:

1. Addressing the tension between the narrow interests of Indigenous owners or stewards of land on which a project is located and the wider interests of Indigenous communities that may be affected by the project. For example, negotiating parties may not necessarily always speak for all impacted community members, raising considerations for how to fulsomely involve people in decision-making processes and benefit sharing, and what processes of engagement ought to look like to capture and respond to diverging perspectives.
2. The need for the creation of institutions that can reflect Indigenous values and the economic values that underpin all forms of development.
3. Establishing the scope for Indigenous agency and autonomy in the use of revenues, which has been shown to be especially positive in instances where Indigenous leaders and revenue managers have a high degree of external autonomy to control and spend resources, but also a high degree of internal accountability.
4. Recognizing the context specificity of any IBA, and recognition that unique cultural factors can create positive and negative outcomes based on how revenues are managed.

More recently, O’Faircheallaigh<sup>24</sup> examined the outcomes from IBA negotiations in Australia and Canada to understand the determinants for variable outcomes of IBAs. This research found that Indigenous political mobilization is key to generating successful outcomes, as opposed to agreements that sanction significant constraints on the ability of Indigenous actors to exercise procedural rights. This stems from a Nation’s ability to exercise their rights, and create opportunities for community participation to establish governance and accountability mechanisms—such as community-controlled impact assessment—a form of Indigenous led



impact assessment that is entirely designed and conducted by Indigenous communities and is driven by Indigenous worldviews and timeframes.<sup>25,26</sup>

**Box 1. Skwxwú7mesh Úxwumixw (Squamish Nation) and Woodfibre LNG: The case of Canada's first legally binding Indigenous-led Environmental Impact Assessment**

On October 14, 2015, the Skwxwú7mesh Úxwumixw Council voted to approve an Indigenous-led environmental assessment (EA) agreement for the Woodfibre LNG project located 7km south of downtown Squamish on Howe Sound. Skwxwú7mesh Úxwumixw Council issued two Environmental Assessment certificates (one for the pipeline that transports natural gas, and one for the facility that cools it to liquid form for shipping overseas). While Indigenous communities issuing EA certificates are not necessarily unique, the process undertaken by Skwxwú7mesh Úxwumixw created a legacy of legally binding conditions for the corporation (Woodfibre), making Skwxwú7mesh Úxwumixw not only a project partner, but the regulator of the Woodfibre LNG project.

One of the 13 conditions stipulated in the EA agreement and certificate requires Woodfibre LNG to develop an economic benefits agreement (i.e. an IBA) to incorporate Skwxwú7mesh Úxwumixw priorities around local economic growth and opportunities for community members to participate directly in the operation of the project or be involved in implementing the EA certificate.

The IBA was signed and came into effect in February of 2019, and includes provisions related to direct economic revenue sharing, in-kind contributions to the Nation, training for community members, and preferential employment opportunities over the life cycle of the project. The IBA is implemented through a joint implementation committee with representatives from the community and the proponent to ensure negotiated benefits are transferred to Skwxwú7mesh Úxwumixw.

The community-driven process has become an exemplary process for negotiating protocols and provisions with project proponents in ways that recognize Indigenous knowledge, culture and stewardship of the land. Accordingly, this process is one of several emerging case examples of how Indigenous-driven EA can help shape how free, prior and informed consent for major development projects can be implemented in practice.<sup>27,28</sup>

Cascadden et al.<sup>29</sup> synthesized literature and created an integrated list of best practices and “explicit descriptions of best practice by providing a three-tiered best practices framework that includes a general description of the best practice, a more detailed definition of the best practice in the form of best practice sub-criteria and a set of indicators for each best practice that help determine how to meet each best practice”. They compiled this into an accessible checklist format to guide negotiation, implementation and management. However, it is high level, broad in application, and does not provide operational guidance. Their 10 best-practice criteria are:

1. **Empowering:** inclusion and empowerment of community and its members in the IBA process
2. **Respect for local culture:** survival and respect for local culture throughout project's lifetime
3. **Affirmation:** affirmation of IBA by both community and proponent, which measures the signatories' commitment to the IBA
4. **Open Communication:** open and transparent
5. **Capacity Building:** in terms of skills, business development and labour opportunities
6. **Equity:** fair distribution of project's costs and benefits
7. **Enforceability:** provisions to ensure IBA is fully implemented
8. **Effective Implementation:** should receive as much attention as negotiation and content
9. **Monitoring and Adaptability:** monitored and adapted based on deficiencies in achieving IBA objectives and to address new impacts as they may develop
10. **Breadth:** needs to include temporal and spatial range of project impacts and full range of tools and objectives

Similarly, Bala-Miller and Hanna<sup>3</sup> synthesized a list of 16 critical issues that may be encountered in developing and implementing IBAs. Their focus was on the LNG sector in BC:

1. **Positives and negatives:** Scoping the positive and negative implications of participating in an IBA (i.e. in terms of needs, capacities and benefits) across an entire LNG project's life-cycle and beyond.
2. **Roles and responsibilities:** The development of a clear governance structure to enhance accountability of all parties during the construction, operation and decommissioning of an LNG project.
3. **Content provisions:** The negotiation of any and all benefits conferred through the IBA, which vary from project to project.
4. **Governance principles and arrangements:** Related to Issue 2, above, governance provisions typically cover how IBAs are ratified and the type of engagement process and voting mechanisms involved in 1) the structuring of the agreement, including financial management structures, 2) the liaising of management committees, and 3) dispute resolution processes.
5. **Linkages with environmental and social impact assessments:** IBAs compliment regulatory requirements to undertake impact assessments for designated projects, and offer opportunities to improve outcomes, especially in cases where environmental and social impact assessment processes are not comprehensive or lack effective engagement opportunities.<sup>30</sup>
6. **Implementation, impact and effectiveness:** Pre-determined criteria for evaluating the success of an IBA, which can be tied to capacity funding, clear communications with meaningful participation and engagement, clear objectives and expectations of mutual obligations from all parties, a clearly drafted IBA, and monitoring, reporting and dispute resolution provisions.
7. **Internal conflicts:** Disagreements within communities about the structure and/or process of IBA development and implementation.

8. **Standing and representation:** Questions who is deemed or considered a legitimate party to engage in IBA negotiations.
9. **Monitoring and evaluation:** Pertains to the actual assessment of how well the IBA is working based on supporting data and information.
10. **Revenue streams and models:** The monetary and non-monetary terms negotiated in the IBA, and the structure of those financial benefits.<sup>5,31</sup>
11. **Gender equity:** Ensuring the fair and equitable participation of men and women in the development and implementation of the IBA, including the dispersion of benefits so that existing inequalities are not worsened.
12. **Data, information and knowledge:** What information to gather, store and share to effectively engage in the IBA process.
13. **Local procurement and local content policies:** Clarifies community expectations around how benefits can support local businesses.
14. **Community resilience and well-being:** Considers the broader context of community well-being, as identified by communities themselves.
15. **Legal context and rights:** Relates to the duty of government to consult, and associated treaty and territorial rights.
16. **Capacity development:** Considers the building of capacity within communities (e.g. essential infrastructure and services) and among community members (e.g. skills and training).

Further, while there are IBAs already established in the LNG sector in BC,<sup>3</sup> and existing research suggests IBAs have potential for improving the outcomes of impacted communities from resource development, it may be that many IBAs fall short of expectations, suggesting there are opportunities to enhance the understanding of success and failure of IBAs, and to benchmark their success.<sup>32</sup>

However, even though there is a good legacy of frameworks, criteria, and guidance for IBAs, and this literature is a strong starting point to guide IBA implementation, we ultimately need principles to guide and frame approaches. The remainder of the report outlines a research approach undertaken to address these limitations and unpack how the perspectives, duties and roles of First Nations communities, government agencies, and industry proponents are similar and different, and how this relates to the implementation of successful IBAs (as understood from multiple perspectives). The focus group findings are summarized and key principles are synthesized to support the development of IBAs.

## THE APPROACH

Our emphasis is on providing perspectives and experiences from those involved in developing IBAs. This includes developing an understanding of determinants of ‘success’, clarifying opportunities for dealing with conflict by making relevant course corrections, and the opportunities by which IBAs may work to redress historical impacts of colonization and whether this is even seen as appropriate or possible.

To understand the how we can better understand outcomes and success relevant to the expectations around IBAs, the FNLNGA initiated this study and undertook three focus groups in June 2022: one with Indigenous community leaders who comprise the FNLNG Alliance Board of Directors and associates, one with industry representatives who comprise the FNLNG Alliance Advisory Board, and one with provincial and federal government officials who work in the sector. The key informants were selected by FNLNGA staff based on past engagement with communities, industry, and government, and based on their involvement in the development of IBAs within the Canadian context. The workshops were organized and conducted by staff members of FNLNGA, with support from two advisors from the University of British Columbia’s Centre for Environmental Assessment Research. The role of the university colleagues was to help with focus group question design, results analysis, and write-up of outcomes. The UBC role is quality assurance and information improvement.

The list of focus group questions is in Appendix 1. These were designed to elicit consideration of the determinants of success of IBAs, and key lessons learned during their negotiation and implementation. Given the fact that many IBAs are subject to non-disclosure clauses, this study did not ask respondents about specific IBAs, but rather, asked them to draw from their professional and work experience to consider what successful and measurable outputs of the IBA process ought to be. Participation by key informants was voluntary and was not required as part of their work role.

The focus groups were not recorded, and quotes are not used in this report. All study team members took extensive notes during the focus groups, and the notes were compiled and cross-referenced for key themes by all of the contributing authors. To ensure the reliability of data and information collected, notes were circulated among team members immediately following the focus groups to resolve any discrepancies.

The ground-truth approach is guided by the best practice components identified above. Based on these a coding rubric was created to further examine how existing best practices compare with expectations around IBA success and the determinants of that success.

A draft report was circulated by FNLNGA staff to the participants for feedback and to confirm findings. The comments that were received were then used to refine and revise the report.

## INSIGHTS SHARED

### FROM FIRST NATIONS LEADERS

Conversations with First Nations community leaders highlighted the importance of IBAs to be an iterative and flexible ‘living document’, which is also an enforceable contract rather than a simple memorandum of understanding. It was shared that a legally binding agreement binds parties to a course of action, and without that, communities lose confidence in the conferral of benefits and have no legal recourse when proponents or crown negotiators do not deliver on their promises. Accordingly, IBAs should have a clearly defined governance structure with clear clauses/provisions to hold parties accountable. An example would be an implementation committee that evaluates and tracks the progress of the IBAs and has the ability to address problems with implementation for either negotiating party. Implementation committees—are essentially a working group that tracks the progress of the IBA. This tool was highlighted as a particularly promising practice for keeping lines of communication open with proponents, and as a way of continuing to build and strengthen the relationship, and work collaboratively towards the goals and intent of the IBA.

It was also noted that a ‘successful’ IBA is one that is co-developed with input from elected and hereditary leadership, and that is clearly understood by community members. Thus, a ‘good’ IBA is one that is not widely disputed or contentious within community, and where there is a broad understanding of the aims that the IBA is seeking to implement. To that end, having an official community signing with community participation was shared as an effective way to promote community understanding of the IBA and the types of benefits it aims to confer on the community. Notably, community leaders highlighted that IBAs ought to be directed towards securing the future of the community in ways that support the pursuit of self-determination through local procurement opportunities, business growth, educational improvements, housing, wages, the protection of lands, culture and language, and generally improving the quality of life in communities.

Indigenous leadership shared two key challenges related to the negotiation of IBAs for LNG projects. First was the issue of community capacity. Many raised the “reality” that communities need to be prepared for the IBA process, even before being approached by a project proponent, but that community capacity to negotiate, participate in complicated financial conversations, and manage the IBA workflow may be low. They further highlighted that not being adequately networked with different industry representatives may also be an indicator of a low-level of capacity to engage with IBAs. While this capacity can be built by participating in an IBA process, leaders signalled that being prepared—in terms of understanding what existing capacity limitations may face the community and what needs a community may have—prior to even being engaged by an industry representative were recommendations they would make to other community members; that the best IBA for a community is one for which they are ready and prepared to implement.

While capacity issues may not be quickly or easily solved without the capital and resources that can be supplied by an IBA, conducting a simple community needs assessment can go a long way to preparing a community for an IBA by giving a clear sense of what provisions may be more or less important to negotiate for in the IBA process.

The second key challenge was the nature of NDAs, (also known as ‘confidentiality agreements’) —a legally binding mechanism that prevents negotiating parties from disclosing specific terms of their agreement with others who are not signatories to the agreement. NDAs were recognized, in and of themselves, as not necessarily a negative aspect of IBA negotiations, and that NDAs provide proponents with the security to commercialize a project with a high-degree of certainty. However, focus group participants noted that a key challenge of NDAs is that they may run counter to cultural obligations to share information with neighbours, and that some community members may perceive NDAs to be out of step with First Nations values. As a result, NDAs may potentially inhibit the ability of multi-nation negotiation, particularly in instances where projects are being developed over multiple and/or overlapping territories or land claim areas.

One idea that was provided in relation to overcoming the challenge of non-disclosure agreements (NDAs) was to create multi-party negotiations where multiple communities or nations would simultaneously negotiate with a proponent in an effort to enhance transparency and understand the impacts of a development as perceived by neighbouring communities. Such collaboration can also contribute to building capacities based on common experiences, sharing resources, and ensuring consistent outcomes.

In summary, IBAs were recognized among Indigenous leaders as an opportunity to support self-determination and redress the impacts of colonization. But crucial to that recognition was the importance of relationships between the community and the proponent—the success of the IBA would be dictated by the strength of trust and rapport between negotiating partners. The sustainability of the relationship will define the sustainability of the IBA and the sustainability of benefits from the project.

## FROM INDUSTRY

A second focus group conducted was with industry associates of and advisors to the FNLNG Alliance. Participants in this focus group indicated that IBAs work best when they are flexible, but also clear in terms of their expectations. To that end, taking what was referred to as a ‘principles-based approach’ to guide the development of the IBA was raised as holding promise (for more information on potential principles to structure an IBA, see the ‘best practices review’ section of this report, above). This approach is oriented towards building consensus among negotiating partners about what principles should be foundational not only to the agreement, but also the process of negotiating the agreement so that there is a commitment to build relationships, co-generate terms of reference, and build a collective understanding of what the needs and goals of both parties are.

Industry participants also highlighted the importance of having well-defined accountability mechanisms to “course correct the implementation of the IBA if and when things don’t work out.” Here, it was recognized that having community member ‘boots on the ground’ to effectively evaluate the implementation of the IBA, trigger financial penalties if goals are not met, and having a clause for how to reconcile conflicts were recognized as best practices. Flexibility of the agreement was also highlighted as a key condition for success, and a recognition that ‘success’ may be subjective and will need to be evaluated from the multiple standpoints of negotiating parties to effectively evaluate and create conditions to fix challenges as they emerge.

A recommendation was to find ways to minimize conflict early in the process by connecting IBAs to project milestones in ways that streamline funding, the timing of capacity building, and local procurement that enable the community to adequately plan and prepare for those milestones. Thus, for these participants, flexibility is recognition of the complexity of negotiating and implementing IBAs for projects that are subject to shifts in global commodity pricing and changes in community priorities over the lifecycle of the project. Industry participants also highlighted that an important metric of success of IBAs was that community members and leaders alike were aware of their existence and goals so as to adequately support implementation and operationalization.

One challenge noted in this focus group was the complexity of measuring and evaluating an ‘impact’. One participant raised an example that the number of individual community members hired by the proponent was an oft-cited metric, but that spin-off benefits of procurement and capacity building via training or business development beyond the project are rarely considered because they are hard to measure. For example, if a local community member is hired to work on a project, and works for two years and receives training in a number of relevant skilled trades, but then quits to pursue work for another company with better pay because they are now ‘skilled up’, the argument is that the spin-offs that create lifetime careers may not be adequately captured relative to first order job creation. Thus, implementation committees need to give thought to how best to capture both the direct and indirect benefits of a project, whether or not they were negotiated as part of the IBA, in an attempt to measure and understand the true positive and negative impact of a project on their communities.

A second challenge raised by this focus group relates back to insights shared by Indigenous leaders – the capacity to engage. Industry affiliates indicated that in some cases, their project may be one of very few economic opportunities available to a community. As a result, communities may view the IBA as a platform to solve many social issues that exist within a community and which may pre-date the existence of the project. This was perceived as an immense amount of pressure to be placed on corporate partners, and the recommendation was to use IBAs to address community needs, but to do so in ways that tie back to the impact of the proposed project specifically, and to use those benefits to build local capacity to build economic, social, environmental and cultural sustainability. In short, companies often struggle because they are asked to deal with issues that are not necessarily related to their project and which they are not equipped to deal with, or may have no power to affect. The question then

becomes what the proponent and community can reasonably be expected to do, and what can the project be expected to do in redressing community issues? These are the types of questions that are effective in terms of relationship-building, clarifying priorities, and building a pathway for the creation of clear expectations among negotiating partners.

## FROM GOVERNMENT

The focus group with government officials was markedly different from the other two focus groups, largely because of how rapidly the IBA landscape has changed in BC and in Canada under UNDRIP and the provincial DRIPA, the TRC, and issues related to free, prior and informed consent.

For the most part, IBAs are between an Indigenous body and a proponent (a company). An IBA is often the starting point for ongoing dialogue and relationships on long-term projects in which government really has no role. The helpful aspect here is that IBAs are freely entered into and separate from the Crown's duty to consult. This is an important quality of IBA arrangements.

Government's role in IBA negotiation is different from that of proponents because they almost exclusively negotiate land title and revenue sharing from resource development, rather than other provisions that may be negotiated between proponents and communities. While government's role is therefore to negotiate a fair and equitable distribution of resource revenues to impacted communities, this is more strongly related to the negotiation of rights, title and land than in instances where negotiations are taking place with a proponent. NDAs are also less relevant for government officials, as the terms of all negotiated IBAs are publicly posted upon agreement of the terms by negotiating partners. A full list of negotiated IBAs between Indigenous communities and the provincial government can be found on the BC government's [Natural Gas Benefits](#) website. The role of government, with respect to IBAs is most often as *experienced observers*.

To that end, this focus group was largely oriented towards the procedural elements of IBAs. That is, raising the importance of coming to a common and shared understanding around 'need' and 'equitable share' based on impact, and ensuring that whatever process and provisions are negotiated, are defensible for all negotiating parties. Government officials highlighted that IBAs are increasingly used as a mechanism to develop consensus and consent for major projects. Participants also agreed with the Indigenous leader focus group that success ought to be defined in relation to the way that these agreements create lasting, sustainable benefits rather than a simple short-term increase in local employment. A notable difference, however, was the notion that success would also be determined by the political will of Indigenous communities to stay engaged and continue to engage with both the Crown and proponents in the future, which was recognized to be a function of the ability to hold negotiating parties accountable to the intent of the agreement.

Government participants observed two challenges that Indigenous communities and industry can face in negotiating IBAs. First was the issue of shared or overlapping land claims. In



instances where land is contested or shared, it can be challenging to parse out which community is more impacted and what the corresponding benefit should be. Further, in the event that the control of lands is part of the negotiation, overlapping territory claims can lead to instances of conflict not only with government, but also between nations themselves.

The second challenge was in instances where the opinion of the project or IBA differs between elected and hereditary leadership. In these instances, not only does this create a degree of uncertainty for the IBA process more generally, but it was also perceived to potentially also fuel conflict within communities that can inhibit collective action towards a common goal (e.g. economic self-determination). The case of the Coastal Gas Link pipeline and the Wet'suwet'en Nation were highlighted as a particular example of these challenges in terms of their impacts to project certainty and the corresponding transfer of benefits from the project.

### Similarities Across the Focus Groups

The overarching similarity across perspectives represented in this research study is that IBAs will be defined by the strength of relationship between negotiating parties before, during and after the signing of an agreement. This was viewed as being highly dependent on the need for clear, open communication at all times which can be a measure of the strength of the relationship. There was also acknowledgement that changes in staff among either negotiating party can inhibit the success of an IBA by challenging the strength and duration of relationships developed by core negotiating representatives. Related to this is the need to build capacity for negotiations. This was a notable aspect to leveling the playing field for negotiating parties—particularly for Indigenous communities that do not often have the legal council, resources or expertise of large corporate entities—which would enhance a sense of 'readiness' to build the relationship even before the IBA process begins. Thus, this research responds to an identified gap in the literature<sup>11</sup> in that IBAs can act as a mechanism to support Indigenous rights.

Across all focus groups, it was recognized that the success of an IBA will be measured in part by the ability of communities to benefit from negotiated provisions (e.g. land transfers, acquisition of new infrastructure, development of existing land with cultural value, access to procurement, contracting and employment, community and economic investments, capital acquisition for equity shares in a corporation, and related capacity building). However, there needs to be conditions to define the success of an agreement before negotiations are started. While an IBA should clearly outline benefits and opportunities for impacted communities, these needs have to be defined by the community in relation to the priorities of that community.

There was broad agreement across focus groups that the 'best' IBA, is the one that a community is ready to negotiate and implement, but that because these agreements are subject to the changing nature of global commodity markets and local needs, an agreement that allows for some flexibility in its implementation is beneficial for all parties.

## Unique Perspectives

Despite the broad agreements highlighted above among the perspectives represented in this study, there were two key differences in understanding of IBAs. First was the role of government which was seen as playing a different role in these types of negotiations which when entered into with Indigenous communities is more about land and dollars from resource revenues which are required to be publicly disclosed. This process can run parallel to or be integrated with formal land and treaty negotiations which tie back to the government's responsibility to consult communities about development, but also negotiate Indigenous rights and land titles. This is markedly different from when a proponent may negotiate the terms of an IBA with a community, where government may have little to no involvement beyond confirming projected resource revenues.

Other distinct observations were in understanding the strengths and benefits of non-disclosure agreements between Indigenous and industry perspectives. NDAs provide a degree of security for signatories to an agreement, but especially for proponents in establishing and maintaining the agreement. They allow parties to share sensitive information (e.g. 'trade secrets' or business plans) with a legal guarantee that it will not end up in the hands of competitors and affect a corporation's competitive advantage as it relates to a given project.

Notable benefits of NDAs are that they are a cost-effective means to clearly define what information is public or private in a negotiated agreement, and outline the consequences of disclosing sensitive information. They can also ensure the sustainability of a project and the transfer of negotiated benefits. For example, a proponent may 'open their books' to share full projections of project profitability into the future to enable an impacted community to garner a better sense of the scope of operations to more effectively negotiate an IBA that is mutually beneficial based on the profitability of the project and the perceived impacts on the community.

However, NDAs may also inhibit the ability of an Indigenous community to share information about a given project with other communities that may also be negotiating with a proponent, which limits the leverage of multiple negotiating communities with the corporate entity. NDAs may also be seen as starting a relationship on the assumption of mistrust between signing parties, which may negatively impact the relationship from the outset. Ultimately, there is no 'right' or 'wrong' answer to whether to enter into an NDA, and the context of the project, the community and the relationship between negotiating parties may need to guide decisions on whether or not to sign an NDA.

## PRINCIPLES TO SUPPORT IBA NEGOTIATION AND IMPLEMENTATION

Our study highlights some of the challenges and opportunities for Indigenous communities affected by the liquified natural gas industry in negotiating IBAs. The emphasis is on how different parties understand the value of these agreements. While this report is not intended to be prescriptive, nor provide an exhaustive review of IBA implementation relevant to the LNG

industry in BC, there are several concluding *takeaways* that Indigenous community members and leaders may find valuable that emerged from this research.

The takeaways are framed as **nine principles** that can help frame how we can think about the IBA process before defining specific or detailed outcomes and expectations. The principles reflect ideas that have emerged in the literature (e.g. Cascadden, 2021), but there are distinct characteristics. They really provide a starting point for negotiation and implementation, and are helpful not only for communities, but for business too.

## The Principles

1. **Realistic and Feasible: IBAs need to be evaluated from multiple perspectives to co-define 'success'.** IBAs need to be developed with a sense of adaptability and responsiveness to changing market conditions and/or community priorities. Sharing definitions of success and taking a 'principles-based approach' to negotiating agreements can be helpful for building trusting relationships between negotiating parties. However, IBAs ought to be evaluated to adequately manage expectations on all sides to ensure that the plan is actually doable. Thus, instituting an implementation committee or other body that tracks agreed upon metrics to evaluate the shared understanding of success is a promising practice for ensuring the sustainability of these agreements.
2. **Relational: IBAs will be judged by the strength of relationship among negotiating parties.** Relationships require work and are not just about the transaction of monetary benefits. A foundation of trust and continuity of relationship are seen as central to the long-term success of these agreements. Relationship building also needs to begin early.
3. **Respectful: The IBA process must acknowledge and demonstrate respect for Indigenous worldviews and governance processes.** Decision-making timelines and priorities may operate on different time scales from the schedules initially envisioned by proponents of a particular project. Knowing and acknowledging this can help all parties anticipate and plan together for timely outcomes. Understanding needs to flow in two directions and account for the realities that parties face. Just as industry must acknowledge and understand community priorities, histories, and governance, communities will need to understand the realities that business faces in getting financing for a project, getting it built, operating it, and making the effort worth investing in.
4. **Capacity: The capacity of communities to proactively engage in IBA processes varies considerably.** Recognize the perceived or actual limited capacity to negotiate, and the need to ensure a *level playing field* during negotiations. All parties to the IBA process must be mindful of the power and resource differences between business, governments, and First Nations.
5. **Clarity: IBAs need to be clear as well as aspirational.** IBAs should clearly and simply outline the transfer of benefits from proponents to impacted communities, and have clear mechanisms for recourse if and when one of the negotiating parties does not meet their commitments. Recognizing the complexity of a multi-year project, using

aspirational language can be helpful to develop a shared vision of *what is success* within the agreement, but these ideas need to be linked to observable outcomes.

6. **Flexibility: IBAs should have clear goals, but also protocols to enable course corrections during the lifecycle of a project.** Flexibility is key to matching the project with the changing conditions, needs, and priorities of communities. Natural resources are subject to global economic conditions, commodity markets, and even national events and needs. It can be important to embed adaptive and flexible qualities in an agreement to allow for flexibility in its implementation.
7. **Longevity and Anticipatory: IBAs should consider 'cradle to grave' impacts of a project.** They should cover pre-construction impacts, impacts during the construction and operation, all the way through to the decommissioning of the project. Tying benefit allocations to key project milestones can be a helpful way to streamline planning processes to enable communities to plan for resource revenues and community preparation.
8. **Strategic: Having a clear implementation plan is key.** While negotiating an agreement can be viewed as a measure of success in and of itself, the real work of the IBA starts after the negotiations. Taking a strategic and planning oriented approach that is adequately resourced with staff and financial resources will be key for communities to reap the benefits of the agreements they have negotiated.
9. **Holistic and Beneficial: IBAs should consider a wide array of potential benefits.** An IBA provides an opportunity to identify and strengthen the benefits of projects for communities and business alike. An IBA should take a holistic view of benefits and seek to create and support sustainable outcomes both during and post project.

IBAs are a promising tool that may help ensure Indigenous communities are, at a minimum, compensated for the negative impacts of a development project. However, an IBA can also be an opportunity to create important benefits that leave lasting legacies for communities -- if agreements are developed strategically and with sustainability of outcomes in mind. Such agreements also provide a foundation for working relationships between companies and communities, where the needs and expectations of the parties can be understood and articulated and then addressed.

Our work provides a set of principles that compliment and build on existing insights to help conceptualize basic considerations for Indigenous communities when they approach negotiating an IBA. But it should be recognized that there is *no one-size fits all* approach to an IBA, nor is there a universal check-list of objectives or provisions that communities should negotiate.

The IBA context should not be seen as place where Indigenous communities and governments and project proponents are necessarily at odds with respect to development. Increasingly, Indigenous groups are proponents or have significant interests in projects. And they are ever more at the table from the start, and have interests in a project's success and want to create conditions for that success.

While the focus groups emphasized that the ‘best’ IBA is the one that a community is ready to negotiate and implement, it can also be said that IBAs should always be based not only on the local needs and the priorities of communities, but the ability and capacity (or limitations) of companies to deliver.

## REFERENCES

1. Browne, M. & Robertson, K. *Benefit sharing agreements in British Columbia: A guide for First Nations, Businesses and Governments*. [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/westcoast-region/great-bear-rainforest/hw03b\\_benefit\\_sharing\\_final\\_report.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/westcoast-region/great-bear-rainforest/hw03b_benefit_sharing_final_report.pdf) (2009).
2. Gibson, G. & O’Faircheallaigh, C. *IBA community toolkit: Negotiation and implementation of impact and benefit agreements*. [https://gordonfoundation.ca/resource/\\_\\_trashed-2/](https://gordonfoundation.ca/resource/__trashed-2/) (2015).
3. Bala-Miller, P. & Hanna, K. *Benefit Agreements: A wayfinding guide*. 144 <https://okcear.sites.olt.ubc.ca/files/2021/11/FN-LNG-Benefits-Agreements-A-Wayfinding-Guide.pdf> (2021).
4. Bala-Miller, P. & Kanhai Aman, A. *Community benefit agreements systematic literature review (1990-2020): Preliminary Findings Report*. 41 <https://cirdi.ca/wp-content/uploads/2020/10/CBA-Lit-Review-Preliminary-Findings-Report.pdf> (2020).
5. Gunton, C., Batson, J., Gunton, T., Markey, S. & Dale, D. *Impact Benefit Agreement Guidebook*. 63 [https://rem-main.rem.sfu.ca/planning/IBA/IBA\\_Guidebook\\_2-24.pdf](https://rem-main.rem.sfu.ca/planning/IBA/IBA_Guidebook_2-24.pdf) (2020).
6. Dale, D. *Benchmarking fiscal benefit distributions through Impact Benefit Agreements: A case study of the Trans Mountain Expansion Project*. (2020).

7. Fidler, C. & Hitch, M. Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice. *Environments Journal* **35**, 45–69 (2007).
8. Gilmour, B. & Mellett, B. The Role of Impact and Benefits Agreements in the Resolution of Project Issues with First Nations. *Alta. L. Rev.* **51**, 385 (2013).
9. Adkins, S., Jamieson, L., Oleniuk, T.-L. & Spencer, S. UNDRIP as a framework for reconciliation in Canada: Challenges and opportunities for major energy and natural resources projects. *Alberta Law Review* **58**, 339 (2020).
10. Truth and Reconciliation Commission of Canada. *Truth and Reconciliation Commission of Canada: Calls to Action*. 16 [https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls\\_to\\_action\\_english2.pdf](https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf) (2015).
11. Calnan, J. J. *Regional Resource Benefit Agreements: Knowledge Gaps and Considerations for the Adoption of a Resource Benefit Agreement in Northwest British Columbia*. <https://prism.ucalgary.ca/handle/1880/114217> (2020).
12. Gogal, S., Reigert, R. & Jamieson, J. Aboriginal Impact and Benefit Agreements: Practical Considerations. *Alta. L. Rev.* **43**, 129 (2005).
13. Papillon, M. & Rodon, T. Proponent-Indigenous agreements and the implementation of the right to free, prior, and informed consent in Canada. *Environmental Impact Assessment Review* **62**, 216–224 (2017).
14. Caine, K. J. & Krogman, N. Powerful or Just Plain Power-Full? A Power Analysis of Impact and Benefit Agreements in Canada's North. *Organization & Environment* **23**, 76–98 (2010).

15. Cameron, E. & Levitan, T. Impact and Benefit Agreements and the Neoliberalization of Resource Governance and Indigenous-State Relations in Northern Canada. *Studies in Political Economy* **93**, 25–52 (2014).
16. MacLean, J. Impact Benefit Agreements, Transparency, and Sustainability. in *Indigenous-Industry Agreements, Natural Resources and the Law* (Routledge, 2020).
17. Peterson St-Laurent, G. & Billon, P. L. Staking claims and shaking hands: Impact and benefit agreements as a technology of government in the mining sector. *The Extractive Industries and Society* **2**, 590–602 (2015).
18. Meerveld, D. Assessing Value: A Comprehensive Study of Impact Benefit Agreements on Indigenous Communities of Canada. (uOttawa, 2016).
19. Wilson, E. What is Benefit Sharing? Respecting Indigenous Rights and Addressing Inequities in Arctic Resource Projects. *Resources* **8**, 74 (2019).
20. Hummel, C. Behind the Curtain, Impact Benefit Agreement Transparency in Nunavut. *cd* **60**, 367–393 (2019).
21. Kielland, N. Supporting Aboriginal Participation in Resource Development: The Role of Impact and Benefit Agreements. 11 (2015).
22. Knotsch, P. C. & Warda, J. Impact Benefit Agreements: A Tool for Healthy Inuit Communities? 4.
23. O’Faircheallaigh, C. Using revenues from Indigenous impact and benefit agreements: building theoretical insights. *Canadian Journal of Development Studies / Revue canadienne d’études du développement* **39**, 101–118 (2018).

24. O’Faircheallaigh, C. Explaining outcomes from negotiated agreements in Australia and Canada. *Resources Policy* **70**, 101922 (2021).
25. Gibson, G. *Cultural and Rights Impact Assessment: A Survey of the Field*. 69  
[https://firelight.ca/wp-content/uploads/2016/03/MCFN-303\\_MAPP-Report\\_Final.pdf](https://firelight.ca/wp-content/uploads/2016/03/MCFN-303_MAPP-Report_Final.pdf)  
(2017).
26. Gibson, G., Hoogeveen, D. & MacDonald, A. *Impact Assessment in the Arctic: Emerging Practices of Indigenous-Led Review*. 56  
[https://gwichincouncil.com/sites/default/files/Firelight%20Gwich%27in%20Indigenous%20led%20review\\_FINAL\\_web\\_0.pdf](https://gwichincouncil.com/sites/default/files/Firelight%20Gwich%27in%20Indigenous%20led%20review_FINAL_web_0.pdf) (2018).
27. Papillon, M. & Rodon, T. The Transformative Potential of Indigenous-Driven Approaches to Implementing Free, Prior and Informed Consent: Lessons from Two Canadian Cases. *Int. J. Minor. Group Rights* **27**, 314–335 (2020).
28. Bruce, A. & Hume, E. *The Squamish Nation Assessment Process: Getting to Consent*. 19pp.  
<https://www.ratcliff.com/wp-content/uploads/2020/10/The-Squamish-Nation-Assessment-Process-Getting-To-Consent-Ratcliff.pdf> (2015).
29. Cascadden, M., Gunton, T. & Rutherford, M. Best practices for Impact Benefit Agreements. *Resources Policy* **70**, 101921 (2021).
30. Hitch, M. & Fidler, C. R. *Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice*. <https://papers.ssrn.com/abstract=1340057> (2007).
31. Sarkar, S., Gow-Smith, A., Morakinyo, T., Frau, R. & Kuniholm, M. *Mining community development agreements: Practical Experiences and Field Studies*. 90 (2010).



32. Gunton, T., Werker, E. & Markey, S. Community benefit agreements and natural resource development: Achieving better outcomes. *Resources Policy* **73**, 102155 (2021).

## BOX 1: COURT CASES

*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73

*Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44

*Ermineskin Cree Nation v. Canada (Environment and Climate Change)*, 2021 FC 758.

*AltaLink Management Ltd v. Alberta (Utilities Commission)*, 2021 ABCA 342

*Piikani Nation v. Alberta Energy Regulator*, 2022 ABCA 30

*Benga Mining Limited v. Alberta Energy Regulator, et al.*, 2022 ABCA 30

*Stoney Nakoda Nations v. Alberta Energy Regulator, et al.*, 2022 ABCA 30

## Appendix 1: FNLNG IBA Focus Group Questions

1. From your perspective, what does an effective Impact Benefit Agreement (IBA) look like?
  - a. Prompt: how ought they be enforced? Are there examples of enforcement you know of?
  - b. Prompt: procurement, employment, training/capacity, capital spending, funding, oversight and monitoring
2. How do we know when an IBA has achieved its goals?
  - a. Prompt: what indicators, measures, can be used to determine if goals have been met?
  - b. Prompt: how should we evaluate success and/or performance (tools, auditing, reporting, others?)
3. What challenges have you learned about from your observation of or participation in IBAs?
  - a. Prompt: how do you overcome the challenge of transparency in reporting/proprietary nature of the agreement that may limit information sharing within and between nations? In other words, how do you ensure you get comparable agreements with other parties on a similar project?
  - b. Prompt: What if an IBA is not performing the way you want it to? What actions can be taken?
4. What lessons have you learned from your participation in IBAs?
  - a. Prompt: what innovations in IBAs have you observed?
  - b. Prompt: are there recurrent challenges with IBAs?
  - c. Prompt: What lessons have we learned and adapted? What lessons have not been applied.

(Updated Jan. 25, 2023)