



Aboriginal
Peoples and
Impact and
Benefit
Agreements:
Report of a
National
Workshop

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and
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**Aboriginal Peoples and
Impact and Benefit Agreements:
Report of a National Workshop**

by Kevin O'Reilly and Erin Eacott

***Yellowknife, N.W.T.
May 29-31, 1998***

Organized by the Canadian Arctic Resources Committee

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FOREWORD

The Canadian Arctic Resources Committee (CARC) embarked upon a research and advocacy initiative in 1995 known as the Northern Minerals Program (NMP). This series of Working Papers sets out the results of the research that was undertaken as part of this program. We are grateful to the following foundations for providing financial assistance in one form or another over the duration of the NMP.

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CARC has examined mineral development across the North for many years. Most of this work focussed on environmental and socio-economic impacts and benefits, and conformity with law and policy. The NMP envisioned a more proactive approach to linking sustainability and mining across the North. In particular, the NMP has taken aim at the manner in which current policies, regulation and monitoring practices reflect the principles of sustainability. As well, CARC examined the challenges and opportunities that 'impact and benefits agreements' bring to Aboriginal governments.

The following is a list of the NMP Working Papers (an order form for these publications is found at the end of each paper).

1. "Mine Reclamation Planning in the Canadian North" by Brian Bowman and Doug Baker.
2. "Aboriginal Title and Free Entry Mining Regimes in Northern Canada" by Nigel Bankes and Cheryl Sharvit.
3. "Reforming the Mining Law of the Northwest Territories" by Barry Barton.
4. "Thinking About Benefits Agreements: An Analytical Framework" by Janet Keeping.
5. "A Guide to Community-Based Monitoring for Northern Communities" by Brenda Parlee.
6. "The Free Entry Mineral Allocation System in Canada's North: Economics and Alternatives" by Malcolm Taggart.
7. "Aboriginal Peoples and Impact and Benefit Agreements: Report of A National Workshop" by Kevin O'Reilly and Erin Eacott.

These papers are 'works in progress'; much of the research continues. While we believe that the findings offer important opportunities for reform, the views and opinions presented are those of the authors and do not necessarily reflect those of CARC.

CARC will continue to press for changes to mining practice and policy. The findings and recommendations in these papers will be used by CARC to build an agenda for major reforms to northern mining law, better environmental management of mineral development, and fairer relationships amongst northern communities, governments and the mineral industry.

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Janet Keeping, Robbie Keith, Brenda Parlee and Kevin O'Reilly served as facilitators for the small group discussions. Last but not least, special thanks to Erin Eacott who made the workshop 'happen' with her dedication to all the necessary details. Erin also drafted this report which was carefully reviewed by all the facilitators, CARC staff and several workshop participants.

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Introduction

The Aboriginal Peoples' Impact and Benefits Agreement (IBA) Workshop was organised by the Canadian Arctic Resources Committee (CARC) and held in Yellowknife, May 29-31, 1998. The Yellowknives Dene First Nation hosted the workshop. Eighteen Aboriginal organizations and over 35 participants from across Northern Canada were in attendance. Chief Fred Sangris of the Yellowknives Dene First Nation and Barney Masuzumi, Research Director of the Dene Cultural Institute, co-chaired the workshop.

The IBA Workshop grew out of an earlier workshop entitled Aboriginal Communities and Mining in Northern Canada that CARC sponsored in Ottawa April 12-13, 1996 as part of its Northern Minerals Programme. Impact and Benefits Agreements were one of the major themes. There was significant interest at the 1996 workshop in holding a further session to concentrate on IBAs, and CARC agreed to facilitate such a session.

The purpose of the IBA Workshop was to provide a forum for representatives of Aboriginal organizations to discuss various issues concerning Impact and Benefits Agreements. There is a range of experience with IBAs amongst the Aboriginal organizations. Some organizations have negotiated numerous agreements, while others are anticipating or seeking their first negotiations.

There are no consistent definitions or labels for IBAs and no record or catalogue of those that have been negotiated in Canada. Little published information exists on their implementation. Confidentiality provision in most agreements also serve as a barrier to greater understanding of the evolving nature of IBAs and their effectiveness. IBAs were originally negotiated between the government and a mining company. These agreements focused on ensuring that Aboriginal people received training for and employment in the company's mining project. More recently, IBAs have been negotiated between Aboriginal communities and mining companies. Agreements now include a variety of matters beyond training and employment, such as revenue-sharing, environmental provisions, reclamation procedures, cross-cultural training, and dispute resolution. As the term Impact and Benefits Agreement implies, IBAs are intended to ensure that Aboriginal communities benefit from mining projects and, where they contain compensation provisions, to ensure that those communities are compensated for the negative impacts of mines on their communities, their land, and their traditional way of life.

Aboriginal organizations have often negotiated IBAs in isolation from each other with few opportunities to share experiences and to discuss issues. While it was impossible to invite all northern Aboriginal organizations with an interest in IBAs, CARC endeavoured to bring together a group representative of the range of experience available and the geographic variation of the North. The group included Aboriginal governments with settled land claims agreements, some with self-government arrangements, and others that have not yet begun formal negotiations with the Crown. Participants coming to the workshop had diverse concerns. Some wanted to learn about strategies that might be used to bring resource developers to the table. Others wanted to learn how to get better deals from companies or how to better prepare for

negotiations and implementation to take advantage of training and contracting.

The following is a summary of the workshop proceedings and of the main ideas expressed at the workshop. The workshop began with a series of presentations by various Aboriginal organizations on their experiences with IBAs. The workshop participants then broke into small groups to discuss some of the most important issues concerning IBAs. At the end of the workshop, the discussion groups reported and made recommendations in a plenary session.

Presentations on IBAs Negotiations and Implementation

Several Aboriginal organizations were requested to give presentations at the workshop about the negotiation and implementation of some of the most significant IBAs.

1. Kitikmeot Inuit Association on the Ulu Project with Echo Bay Mines Ltd.

Presenter: Keith Peterson, Manager, Kitikmeot Economic Development Corporation

Project Background

Type of Mine: proposed underground gold mine, satellite operation to Lupin gold mine in the central N.W.T., ore to be trucked over a 100 km winter road, 1.5 million tons reserves at 0.374 ounces of gold per ton

Key Dates: property acquired by Echo Bay Mines in 1995, August 1997 project deferred until gold prices improve

The IIBA (Inuit Impact and Benefits Agreement) signed for the Ulu Project in September 1996 is not the first one that KIA attempted, though it is the first IIBA negotiated under the Nunavut Land Claim Agreement. In 1994, the Kitikmeot Inuit Association (KIA) spent over a year negotiating with Metall Mining. KIA learned a lot about IIBA's during this period, but Metall Mining shelved its development project before the IIBA was signed. The signing of the agreement for the Ulu Project was related to the Lupin gold mine. The Lupin mine opened in 1982 and hires about 45-50 Kitikmeot Inuit. In 1996, Lupin was running out of gold to mine and was no longer cost effective on its own. The Ulu Project, about 100 km northeast of Lupin, would extend the mine's life 6-7 years. Lupin did not require an IIBA because it is located outside Kitikmeot Inuit land and began production well before the Nunavut Agreement. Ulu did require an IIBA because it is located on land where the Inuit own the surface. The IIBA for Ulu was important in order to try and retain the jobs at Lupin.

KIA's authority to negotiate IIBA's stems from article 26 of the Nunavut Land Claim Agreement. As the IIBA with Echo Bay was the first to be negotiated under the Nunavut Agreement, some important principles were established which create the foundation for future negotiations. These principles, taken verbatim from the report *Myths and Realities of Inuit Impact Benefits Agreements* (March 1998), included the recognition:

- That major project developments on Inuit-owned lands were required to add “value” to the affected community/regional economies;
- That IIBA’s were to be considered a strategic and long-term economic development tool which could help build corporate capacity for Inuit;
- That IIBA’s should be considered an instrument for fostering goodwill between all parties, and that agreements should provide the foundation for Inuit and major project developers “working together” from the project inception, through to production and finally abandonment stages; and finally,
- That the Ulu IIBA demonstrated a commitment on behalf of the developer to ensure, through every means possible, that project inputs - during the construction and operational phases - would be fulfilled to the greatest extent possible by Inuit. This was done by embracing the idea that “Inuit content” would be the primary trigger for contracting and sub-contracting of services with the mining operation. The acceptance of an Inuit Content Factor in considering and evaluating tenders for the services meant there would be a strong incentive for all potential contractors to have as much Inuit content as possible in the fulfillment of contract specifications. By this process, “value-added” for land claim beneficiaries would be forthcoming.

Some of the highlights of the IIBA with Echo Bay Mines are:

- creation of Inuit business and industry;
- development of an Inuit content formula to help decide how contracts are to be awarded;
- financial assistance from Echo Bay for small businesses;
- advance payments provided by Echo Bay for small businesses;
- Echo Bay’s assistance with community workshops;
- presentation of awareness and education sessions in schools by Echo Bay;
- Echo Bay’s help with family assistance programmes; and
- establishment of an implementation panel.

There have not been any implementation issues with the IIBA for the Ulu Project because Lupin itself was temporarily closed in April 1998 due to low gold prices.

Echo Bay Mines was committed to working with KIA regarding the IIBA. Echo Bay was always open and straightforward, unlike some other companies with which KIA has experience. The relationship with Echo Bay was a good one probably because KIA has been working with Echo Bay since 1978.

Discussion

- What distinguishes a mining company, such as Echo Bay Mines, that is interested in the interests and goals of an Aboriginal organization and is committed to working with the Aboriginal organization?
 - First, Echo Bay Mines had a previous long-term working relationship with KIA. Second, Echo Bay wanted to develop on Inuit-owned land (i.e., there is a legal requirement for an IIBA), and

therefore, the company needed Inuit cooperation for its economic gain. Third, KIA had encouraged Echo Bay to speak with and consult the smaller communities.

- Who funded the negotiations?
 - Federal and territorial government programmes funded the first three IIBA negotiations in which KIA was involved. However, outside expertise can be very expensive. KIA is currently facing their fourth negotiation, and they are asking the company to cover the expenses for negotiations.
- Who were the people involved in the negotiations?
 - KIA's negotiations have included: technical expertise, an advisor, representatives from KIA and from the affected communities, and for some agreements, lawyers. Legal expertise was retained to work on the agreement based on outcomes of detailed negotiations.

2. Makivik Corporation on the Raglan Agreement with Falconbridge

Presenter: Robert Lanari, Director of Special Projects, Renewable Resource Development Department

Project Background

Type of Mine: underground nickel/copper mine in northern Quebec, concentrate shipped to Sudbury for smelting and on to Norway for refining, 17 million tons of reserves

Key Dates: December 1997 production began

Falconbridge began construction of the Raglan mine in 1995 following the signing of the Raglan Agreement. The mine opened in February 1998 and is currently in full operation. It has a life of 15 to 20 years and employs approximately 300 workers. Employees work four weeks at the mine and then have two weeks off. Inuit employees have the option to work two weeks and have two weeks off.

Makivik wanted to negotiate an IBA to obtain social and economic benefits and the participation of Inuit in the mining project. They also wanted to protect themselves. Makivik learned that mines have a tendency to evolve rapidly. Makivik recommended that Aboriginal organizations get good project descriptions included in IBA's so that companies cannot deviate from original plans. If the project becomes larger than originally specified, the company must come back to negotiate with Makivik. The wording of agreements is important.

The Raglan Agreement does not set a quota for Inuit employment. Since the mine began construction, there has never been more than 20% Inuit employees. Somehow 20% became a target, and having a quota can be dangerous. The agreement could have been worded to say that as many Inuit employees as possible are to be hired. However, no quota can also be dangerous if there is no goodwill on the part of the company. The Raglan Agreement includes some of the following provisions. A committee of Inuit organizations and Falconbridge has been created to oversee a number of training programmes, such as heavy equipment training and cooking. Inuit enterprises, such as Inuit Air, are given preference for contracts. Makivik

wanted Inuit to start businesses so a few joint ventures were begun where Inuit communities or individuals joined with companies to get contracts with the mine. For instance, one joint venture has received a contract for all of the trucking that occurs at the mine site. The Raglan Agreement includes financial compensation. The Inuit will receive \$14 million plus 4.5% of mine profits which is estimated to be \$60 million over 15 years. The Raglan Agreement provides for an implementation committee. The committee consists of three representatives from Falconbridge and three from the Inuit. Makivik also got agreement that one of their representatives would be appointed to the Board of Directors for the mine.

Though there are good relations with the company, Makivik is finding that problems are continually occurring with the implementation of the agreement. Makivik has done both environmental and social studies on the impact of the mine. A study on water quality found that nickel was 68 parts/billion while Quebec provides that it should never be more than 25 parts.

Two main concerns regarding social impacts have arisen. First, the rate of turnover of Inuit employees is very high compared to that of non-Inuit employees -- 70% versus 15%. The reason for such a large difference is unclear. Second, Falconbridge is not hiring older Inuit, including many who worked for Asbestos Hill in the 1970s.

Discussion

- Since the James Bay and Northern Quebec Agreement does not require that IBAs be negotiated and since this project is not on Inuit-owned lands, how did Makivik get Falconbridge to the table to negotiate an IBA?
 - Makivik signed a Memorandum of Understanding (MOU) with Falconbridge to get the company to negotiate. The MOU outlined a set of principles, for example, that the Inuit wanted to talk about the environment, about employment and training, and about compensation. Negotiations for an IBA then began based on these principles.
 - Falconbridge was interested in negotiating because an Inuit offshore claim has been recognised by the federal government for negotiation. Falconbridge needed the shore for shipping and was concerned that if the Inuit ever settled a claim, that could affect their project.
- Are the people who negotiated the IBA also involved in implementation?
 - Some of the members of the implementation committee were involved in the negotiations.

3. The Prince Albert Grand Council on the Athabasca Economic Development and Training Corporation

Presenter: Don Deranger, Athabasca Training and Employment Coordinator

Project Background

Type of Mines: several underground uranium mines operated by Cogema (Cluff Lake, McClean Lake, Cigar Lake, proposed McArthur River, Midwest project) and Cameco (Key Lake, Rabbit Lake) in

northern Saskatchewan

Key Dates: uranium mining since the 1940s with upsurge in the early 1980s

Saskatchewan has a unique system for ensuring local and regional benefits from mining. The Saskatchewan government requires that mining companies obtain a surface lease from the government, and the Surface Lease Agreement requires that the company enter into a Human Resource Development Agreement. In 1993, a Multi-Party Training Plan was developed within the context of the Human Resource Development Agreements. The parties involved in the plan are the provincial and federal governments, Aboriginal organizations, and mining companies. The Plan is aimed at providing and supporting employment, training, and economic initiatives in the minerals sector for northern Saskatchewan inhabitants. In 1992, before the Multi-Party Training Plan, there were only nine people from the Athabasca region employed in the mining industry. By September, 1997, there were 276. The September 1998 goal of 300 employees from the Athabasca region will probably be exceeded as 40 new jobs are planned for the fall of 1998.

In 1983, the Northern Labour Market Committee (NLMC) was established, jointly chaired by the Prince Albert Grand Council, Northlands College, and the Provincial Government Office of Northern Affairs. The NLMC has various subcommittees, such as the Mineral Sector Steering Committee which oversees the Multi-Party Training Plan. Other subcommittees include the Northern Apprenticeship Committee, established in 1993 to increase the number and opportunities for apprenticeship in all sectors of northern resource development, and the Athabasca Regional Training Council.

The Athabasca Regional Training Council was established in 1986 to make recommendations and give advice to the NLMC on training needs and priorities for the residents of the Athabasca region. The Council also develops socio-economic profiles of communities in the region. The Council consists of seven communities, three of which are First Nations. The Council's achievements include: the creation of a training centre at Stony Rapids in 1987; work in cooperation with Cameco Corporation and Northlands College to purchase a computerized upgrading programme; annual identification of priorities for training to be developed and delivered in the Athabasca region; active participation in the 5-Year Multi-Training Plan Agreement; and assistance in the development and delivery of a three year pilot project to upgrade training to gain employment in the mineral sector. The pilot project training included one week work placements at mine sites. The project was successful and was incorporated into the Multi-Party Training Plan. The Athabasca Regional Training Council has focused on the mining industry in the last ten years because it was known that mines were coming to the region. Training programmes in the past ten years include: prospectors' training, Adult Basic Education grades 5-10, trades training, First Aid, line cutting, small motors, basic maintenance, carpentry, food services, career counseling, truck driving, mill operators, and related skills.

To meet the needs of residents in the Athabasca region in the next ten to twenty years, the Council has been transformed into the Athabasca Economic Development Corporation. The Corporation's purpose is to facilitate and coordinate economic and training activities that support:

- increased job and business creation;

- economic development that is more sensitive to local priorities;
- partnerships that improve the delivery of senior government programmes and other agencies;
- an improved environment for business and economic development;
- diversification of the Athabasca economy; and
- building and expanding the human resource capacities of the local people.

The Corporation is looking at areas beyond the mineral industry, such as tourism and transportation. Each community is being analyzed to determine what it has to offer in order to develop some form of economic activity in the community. The goal is to develop different projects in each community; for instance, one community will have the Tribal Council offices, another community will focus on tourism, and another community will have post-secondary education facilities. Some of the planned and approved projects are a health facility between Stony and Black Lakes that will provide 40 new jobs, and the Athabasca Dene Tribal Council which will be under the umbrella of the Prince Albert Grand Council.

The “Dialogue” with Northern Leaders consists of Métis and First Nation leaders from Northern Saskatchewan and mayors from northern Saskatchewan municipalities. One of the main goals resulting from the Dialogue is the development of a stronger and more diversified Northern economy, creating jobs and business opportunities. To achieve their goal, the Northern leaders propose an analysis of each sector of the northern economy to determine where investment will achieve self-supporting economic diversification and job creation. They also propose an agreement between the federal and provincial governments on northern development and a Northern Development Board to oversee the analysis and agreement.

Discussion

- What is the source of funding for the Athabasca Economic Development Corporation?
 - The Saskatchewan government provides \$45,000 a year which is about 75% of the total cost of running the Corporation. The remaining amount comes from the communities involved in the Corporation. The main expenses are meetings, travel, and pay for two technical staff.
- Do the students who have one-week work placements at the mine site receive any financial support while they are working at the mine?
 - The mining company pays for the students’ transportation, accommodation, and meals, but the students do not receive any additional income.
- Don Deranger noted that low self-esteem and lack of motivation seems to cause a high turnover rate at jobs. He has taken young people from the Athabasca region to the Aboriginal Games for a number of years in an effort to build self-esteem, self-confidence, and motivation. Programs for youth are important because they can prepare them for future employment.

4. *Little Salmon/Carmacks First Nation on the Mount Nansen mine with BYG Natural Resources*

First Presentation

Presenter: Ed Schultz, Executive Director of Implementation

Project Background

Type of Mine: underground gold/silver, Mount Nansen Mine in central Yukon, ore milled on site, several other properties in the vicinity, relatively small production

Key Dates: discovered in 1940s, past producer in the 1960s, BYG operation went into production in early 1997

This presentation by Little Salmon/Carmacks First Nation offered a community perspective rather than the regional approach of the larger Aboriginal organizations which gave prior presentations. Little Salmon/Carmacks First Nation is located in central Yukon and has a membership of 600 though only 170 reside in the community of Carmacks. Since 1997, Little/Salmon Carmacks First Nation has legally managed and governed 1003 square kilometres of land. For 600 square kilometres of this land, Little Salmon/Carmacks has Aboriginal title to the surface and sub-surface of the land, including minerals. For 400 square kilometres, they have Aboriginal title to the surface of the land, and the minerals rest with the Crown. Little Salmon/Carmacks First Nation is probably the fastest growing community in the Yukon with respect to economic activity. BYG Natural Resources has begun gold mining in the area, and there are proposals for a nearby coal mine, a copper project, and production from a lime deposit. Traditionally, mining companies in the Yukon did not seek Aboriginal consent or hire Aboriginal people for their projects as workers were brought from southern Canada.

When Little Salmon/Carmacks entered negotiations with BYG, it did not have a settled land claim, and therefore, it did not have any substantial or recognized powers with which to bargain. BYG wanted to enter into an agreement partly because it was financially beneficial for the company to hire locally. A rather basic socio-economic agreement (i.e. IBA) was signed. The problem with the agreement was that it was signed by the chiefs and council while the First Nation's constitution, and later its Land Claim Agreement, state that ownership of the land is vested in the people. As a result, when the claim was settled, the socio-economic agreement was no longer legally binding. Renegotiation occurred, but an agreement was not ratified by the citizens for a number of reasons:

- The mine demanded full access and nearly 50% controlling interest over all the Little Salmon/Carmacks mineral interests;
- There was a lack of communication between the Little Salmon/Carmacks First Nation negotiators and the rest of the citizens, and when the Assembly came to ratify the agreement, only a handful of people understood what it said;
- The citizens had a lot of concerns regarding environmental conditions at the Mount Nansen gold mine.

Although the agreement was not approved, Little Salmon/Carmacks and BYG do work together on some mutually beneficial issues, such as employment, training, and community projects. For instance, BYG

employs a total of 70-75 people on site, 30 of which are from Little Salmon/Carmacks First Nation. Another 5-10 individuals from Little Salmon/Carmacks are employed with subcontractors on site, and three are being trained in an assay lab. A joint venture exists between BYG, some other businesses, Yukon College, and Little Salmon/Carmacks First Nation, which has established a satellite Internet system and is now sponsoring training in Carmacks to use this technology. A pilot project on literacy training, which is sponsored by the mine, Little Salmon/Carmacks and other organizations, has recently been developed after a number of Little Salmon/Carmacks First Nation citizens declined offers of promotion to management positions at the mine because they had a lack of confidence in their ability to read and write. The project also provides training for enhanced comprehension and problem solving. An education training society has been developed to promote, foster, and recognise individual achievements that assist in the goal of creating a sustainable community. The society will also identify skills that will be needed or desired in the community in the future.

The presenter cautioned the workshop participants against compromising their governance powers or their ability to properly monitor their lands by signing an IBA. For instance, Little Salmon/Carmacks First Nation will never sign an IBA which forbids them from objecting during regulatory processes. The Little Salmon/Carmacks First Nation government has a clear mandate to ensure the protection of their lands and resources to the greatest degree, and therefore, the First Nation government must retain the ability to challenge the mine on environmental issues.

Discussion

- Have any social issues arisen that were not addressed in the original socio-economic agreement?
→ No, the agreement was very broad. Since Little Salmon/Carmacks First Nation citizens are the majority of the employees, there are few of the problems that occur when a large percentage of people from outside the community move into the area to work. There was an incident of substance abuse at the mine site, but it did not involve Little Salmon/Carmacks First Nation people.
- When mine employees from Little Salmon/Carmacks First Nation notice any environmental problems, they usually go to the First Nation's Land and Resources Department rather than to mine management. The Land and Resource Department does environmental monitoring and enforcement in conjunction with federal and territorial agencies. Mine employees from Little Salmon/Carmacks recognize that the mine will not exist forever, and therefore it is in their best interest in the long-term to ensure that environmental practises are fully implemented. Part of the literacy pilot project is to give mine employees a full picture of the mine workings and explain why certain practises, such as putting chemicals in the tailing pond, are done. Hopefully, this education will increase the employees' vigilance regarding environmental practises.
- Is the language of the Aboriginal People used for instruction in the literacy pilot project? What is the language used at the work site? KIA indicated that Inuktitut is used at work sites, even to the extent

that signs are in Inuktitut.

→ English is the language used both in the pilot project and at the mine site. Unfortunately, since outside interests are predominant in Yukon society, everyone speaks English. More First Nations people speak English than their own languages. Programs exist that are trying to revitalise the languages. Like language, outlook or perspective on the world can also be a barrier. The pilot project, with regards to problem solving, is incorporating the outlook on the world that is held by Aboriginal people because it may be substantially different from people raised south of 60° North. The project is a 'pilot' project because Little Salmon/ Carmacks First Nation in cooperation with the National Literacy Council is trying to determine what kind of innovative curriculum can be developed.

- How did Little Salmon/Carmacks First Nation get people employed at the mine who may not have had the required skills?
 - There was a period of time in the Little Salmon/Carmacks area when mining activity was very low. Little Salmon/Carmacks First Nation felt that new mines would likely occur so a joint initiative with Yukon College was organized to train citizens in mining skills. When BYG arrived, the citizens already had the required skills. It was recommended, that if there is a potential for future mines, to not wait for the mines to begin in order to start training.
- Was there anything in the mining lease that reflected any of the land claim agreements?
 - Little Salmon/Carmacks First Nation is not aware of anything in the lease about land claims agreements. The BYG site is on unoccupied Crown land. One of the main reasons BYG wanted to enter into a socio-economic agreement was to have access to the land for which they knew Little Salmon/Carmacks First Nation was going to get a settled claim. This land has a very high potential for zinc, lead, copper, coal, and gold. There will probably thus be mining in the area for a long time to come.
- It seems to be common practice to put clauses in IBAs that prohibit Aboriginal organizations from objecting to the environmental performance of a mine. Do you have any further thoughts or advice on this issue?
 - Aboriginal people should never professionally or personally get into a position whereby they compromise any of their governmental powers. If Aboriginal people negotiate their sovereignty, they put restrictions on it and put a dollar value on it, both of which they probably do not want to do. Tell the company that the issue is simply non-negotiable, that you are not prepared to negotiate any of your sovereignty. Tell the company that the issue has nothing to do with the fact that they want to do certain activities in your areas, and state that it is possible to enter into an arrangement for mutual benefit without negotiating your governmental powers. Add that you are not the body that environmentally regulates them; regulation is done by the territorial and/or federal government.

Second Presentation by Little Salmon/Carmacks First Nation

Presenter: Chris Noble, Director, Lands and Resources Department

The Lands and Resources Department of the Little Salmon/Carmacks First Nation was fully established in November 1997. It has a mandate to protect and preserve the traditional land and its resources for future generations. For instance, during future IBA negotiations, the department would ensure that a comprehensive reclamation and decommissioning plan are established. With regards to mining projects on settlement land, the Lands and Resources Department has an enforcement and monitoring role to ensure that the land and resources are not jeopardized. Clauses in the Umbrella Final Agreement protect settlement land that is downstream or adjacent to mining operations located on Crown land. For example, BYG's Mount Nansen mine is on Crown land and discharges into a creek that flows through settlement land. The Lands and Resources Department monitors the effects on such settlement land. On Crown land within traditional territory, the Lands and Resources Department is joint manager with the government. The department is always involved with federal and territorial field inspections.

The Lands and Resources Department is currently involved in a number of projects. The department has an ongoing comprehensive training programme for its staff on water quality and mine operations. The department is developing a Settlement Lands Act which will legislate land and water use on settlement lands. As well, in cooperation with the Na-cho Ny'ak Dun First Nation and Selkirk First Nation, the department is developing a land use plan for 140,000 square miles of traditional territory. This project involves defining ecologically sensitive areas, using traditional knowledge, and defining potential mines and mineral sites.

Discussion

- Yukon First Nations have a much more community based structure for their land management process than do the Northwest Territories First Nations which are more regionalized. Could the land management processes in the Yukon vary from community to community? And if so, are you worried about the effects on or disincentives to industry when they are faced with one set of requirements from one community and another set from another community?
 - The fourteen Yukon First Nation communities work closely together, and it is generally understood that all the communities are achieving similar goals. The Umbrella Final Agreement that applies to all the communities outlines the processes for land use planning and environmental assessment. Regulatory and environmental standards are enforced through these processes, and they are standardized. They are not less than what the general Canadian law already requires. Companies may even find Yukon First Nation requirements more stringent than standard Canadian law. Although the land management processes are similar from community to community, in order to achieve significant community contributions in environmental assessment and monitoring, there cannot be one uniform process.

5. Labrador Inuit Association on the Voisey's Bay Project with Inco

Presenter: Chesley Andersen, Mineral Resources Advisor

Project Background

Type of Mine: proposed open pit and underground nickel/copper/cobalt operation, ore milled on site and then shipped by ocean vessels for smelting and refining

Key Dates: discovered in the early 1990s by Diamond Fields Resources and sold to Inco in 1995, undergoing environmental assessment expected to be completed in mid 1999

The Voisey's Bay Project is a very large project that will produce nickel, copper, and cobalt for 25 years. It includes open pit and underground mining operations, an airstrip, and roads. There is considerable uncertainty around the project given low nickel prices and the lack of agreement between the company and the province over the location for smelting the ore. The project is located in an area where there has been no previous major development, except for a few Pinetree radar sites. The Inuit were not happy about the Voisey's Bay Project, especially as a result of the level of disrespect they received from exploration companies. They are beginning to develop a better understanding of mining as a result of this project.

The Labrador Inuit Association (LIA) first began discussions with Diamond Fields Resources (later sold to Inco) in October, 1995. A letter of intent was signed, and the company eventually agreed to negotiate IBAs with both LIA and the Innu Nation. The Inuit have now been negotiating with the company for over two years, often steadily for three or four months at a time. There has been progress in the areas of education and training, employment, business opportunities, and social and cultural protection. The IBA should include environmental impacts, compensation, and liability provisions, though the company is reluctant regarding the latter. The agreement will not have a specific quota for employment for Inuit, but will attempt to maximize opportunities. Problem areas during the negotiations include legal provisions and a financial sharing arrangement that is meaningful. An attempt was made at pre-implementation of a training programme to determine how well training would work. A multi-party training agreement was signed, but unfortunately no one agreed to fund the training programme. On the other hand, joint ventures with Inuit and the company have been successful at the exploration stage.

LIA has stated that they need a land claim agreement and IBA before the project goes ahead. The governments have not been very sympathetic. However, a four party Memorandum of Understanding was negotiated a year ago between the Newfoundland government, LIA, Innu Nation, and the federal government under the Canadian Environmental Assessment Act for the environmental assessment of the Voisey's Bay Project. The company has prepared an environmental impact statement as part of the environmental assessment. The environmental assessment panel has found the statement inadequate, and the company is currently addressing these inadequacies. Public hearings on the project will begin this fall, and production could start in the summer of 1999.

Discussion

As the Inuit are still negotiating, confidentiality must be maintained, but questions were answered where possible.

- What sorts of skills did you concentrate on for the pre-implementation training programme?

→ The programme looked at what skills already exist in the community and gave a broad perspective on whether or not LIA could meet employment objectives when the mine started. The expected employment level when the mine begins is 420 and this number will probably triple with the underground phase. Currently there are 900 Labrador Inuit who are interested in working at the mine on a list. They have a lot of skills for the surface activities, such as cooking and cleaning, but fewer skills for the underground work. Labrador Inuit have some experience in drilling, blasting, and quarrying as a result of their own small anthrosite quarry which is near Nain. The programme also tried to look at what training could be done in the communities and what could be done on the mine site.

- What is the proposed time-frame for negotiations? Is there a deadline?
 - The company wants to get the project up and running as fast as possible because they could then have more control of the nickel market. The company might also then be able to close some of their high cost Sudbury area operations and meet their contract demands. Now that the world-market nickel price is very low, there is no time-frame in which to finish negotiations. However, Inco is still interested in Voisey's Bay because they can use the open pit operation to cut their loan costs for the original purchase of the property. The open pit is very rich and will be a low-cost operation.
- Has Inco continued exploration while negotiating, or are they building roads?
 - They are continuing to drill. However, as a result of the court order from last summer, they cannot build roads, though they would like to, until the environmental assessment is finished.
- Does the continued drilling create some uncertainty for yourselves regarding the scope of the underground phase?
 - No, the company has found enough nickel -- 150 million tons -- to begin mining and be in production for many years. The company might continue exploration underground to have more reserves with which they can justify the need for a smelter and refinery. However, this justification is not particularly needed because the company has already exceeded the 50 million tons of proven reserves to economically justify a smelter and refinery. Inco wants a return on their investment for buying Diamond Field Resources, so finding more ore bodies will simply help their overall financial position.
- What sort of working relationship does LIA have with Innu Nation? The Innu Nation is essentially at the same stage as LIA in terms of trying to negotiate a land claim and an IBA and in working on the environmental review for the Voisey Bay Project. Is LIA able to work closely with Innu Nation?
 - The mine is located in an area where there is overlapping Innu and Labrador Inuit land use. The two Aboriginal organizations do not have an overlap agreement, but they have the principles of one worked out. The difficulty for both groups is that they are each involved in numerous large projects and, therefore, working together is not a priority right now. In addition, both are negotiating separate IBAs and land claims agreements. The Innu are in the midst of hydro development

proposals and are trying to build a new community. Both groups do not have the time to work together more, though they have talked about doing so. They have not met in six months, but they expect to meet more frequently in the future. Since the groups worked together last year in court, they are able to do so in the general sense. However, the groups do not have the same negotiating table, and for each group some issues are different or of different levels of concern.

6. Cree Nation of Mistissini on the Troilus mine with INMET

Presenter: Alan Penn, Cree Regional Authority

Project Background

Type of Mine: open pit gold/copper mine in east central Quebec, 46 million tons of reserves at 1.2 grams per ton gold and 1.4 grams per ton silver

Key Dates: began production in late 1996

The James Bay territory in northwest Quebec has a relatively extensive history of mining in its southern portion over the past 30 years. There have been 25 individual mining operations. There is essentially no history of Aboriginal employment in the minerals sector in the James Bay territory. In 1994, the Mistissini Cree Nation broke out of this mold and successfully entered an employment agreement with INMET. INMET is the operator of the open pit Troilus gold mine west of Mistissini. The mine has now been operating for two years and is expected to last 15 years at a rate of 10,000 tonnes of ore per day. Currently, there are 75 Cree employees on site and 25 on mine-related contract work. Cree make up half of the drivers at the mill.

There are several circumstances that made the agreement between the Mistissini Cree Nation and INMET possible. It was not obvious at the outset that an agreement was possible. The James Bay Agreement is a land claim settlement that occurred as a result of litigation about hydro-electric development in Northern Quebec. The James Bay Agreement does not in itself provide for direct access to participation in mining. It does have an environmental and social impact assessment process and a provision for protection of wildlife. Regional and local Cree authorities have attempted to use this impact assessment as a means of gaining an audience for their interest in mineral and other natural resource development. In the case of Mistissini Cree Nation, unlike in other cases, the attempt was successful. The Quebec government has viewed suspiciously the Cree's use of impact assessment to gain access to partnerships in the minerals sector. The Quebec government has told companies that they do not need to enter agreements. The provincial government has advised mining companies to be cautious in their dealings with Aboriginal peoples so as not to set a precedent for the mining industry in general. An agreement was eventually signed partly because: INMET demonstrated a willingness to approach the community; there was a group of Cree people who were prepared to push very hard for the agreement; and there was a wide measure of public support. INMET was not based in Quebec, and was not significantly constrained by existing collective bargaining agreements. This made it possible to negotiate job descriptions, to provide access to Cree employees and circumvent restrictions which would normally accompany Quebec language policies.

The agreement between the Mistissini Cree Nation and INMET is structured primarily on employment. INMET agreed to negotiate job descriptions for all positions. The company was asked to, and did produce, a list of potential contracts, and this list was screened by the Mistissini Cree Nation and negotiated. As a result, the Cree were given the basis to plan their own private sector development. Much of the contracted work during construction was carried out by a joint venture. The agreement includes provisions for training, for a remedial funds package aimed at families whose livelihood (i.e. trapping) is impacted by the project, and for the participation of Mistissini Cree in the development and implementation of environmental monitoring programmes. A good deal of emphasis is placed on minimizing communication problems at the work site between Aboriginal and non-Aboriginal people; for instance, there is a cultural awareness programme. The work schedule allows the Cree to take time off in the spring for hunting. The turnover rate for Cree employees is very low and is similar to that of the non-Aboriginal employees.

The Troilus mine is a relatively marginal and vulnerable project. The Cree community sees the project as an opportunity to gain work experience in a company where continued viability depends on strict control of productivity.

The Legal Basis for Impact and Benefits Agreements

Presenter: Janet Keeping, Canadian Institute of Resources Law

CARC commissioned Janet Keeping, Research Associate at the Canadian Institute of Resources Law, to write a comparison paper on IBAs in Northern Canada for the workshop. The paper was included in the package of background documents that were sent to each participant in advance of the workshop. In 1997, Ms. Keeping was commissioned by the Government of the Northwest Territories to write a paper on the legal and constitutional bases for IBAs. In her workshop presentation, Ms. Keeping mentioned the on-going work of her colleague, John Donihee, to prepare a guide book on IBAs that would draw upon wording and arrangements found in a broad variety of IBAs.

Ms. Keeping spoke of four main points regarding the legal issues around IBAs. Each point is related to the fact that there is no clear regulatory framework for IBAs.

1. Whether or not IBAs are legally required varies according to location. For example, the Nunavut Land Claim Agreement states that an agreement is legally required. The Nunavut Agreement has many tools for the negotiation and implementation of IBAs.
2. Legal requirements for the negotiation of IBAs also vary according to location.
3. Even in areas where IBAs are legally required, there are no legal requirements for the contents of IBAs. However, some contents or provisions have arisen in a number of IBAs that are of legal concern. For instance, many IBAs include a confidentiality clause and/or a clause that prohibits the Aboriginal

organization from objecting to certain steps taken by the mining company, or certain events at the mine. Such clauses negate Aboriginal organizations' freedom to speak and express opinion. Perhaps Aboriginal organizations should let companies know that such clauses are not negotiable, or perhaps government action is appropriate to prevent the inclusion of such provisions in IBAs.

4. Article 26 of the Nunavut Land Claim Agreement states that IIBA's are to be treated as if they are enforceable contracts. According to Ms. Keeping, IBAs should not be thought of as contracts alone because contracts intend that each party gives something to the other. For example, Aboriginal communities should not, as is required by the covenant in the BHP model agreement, have to refrain from objecting to events concerning the mine's development or operation in exchange for benefits. IBAs should ideally be a legally required part of the regulatory framework (pursuant to a land claim, or statute). Seen in this light Aboriginal communities do not have to give the resource company anything in exchange for the benefits, because the company is already receiving the right to access the land and extract minerals. However, IBAs could still be enforced as contracts if they are written in language which allows them to be enforced. Existing IBAs tend to use unclear definitions and vague wording which decreases their enforceability. IBAs with dispute resolution mechanisms can likewise still be treated, or enforced, as contracts.

Ms. Keeping also explained, using northern Saskatchewan as an example, that IBAs may not be necessary to provide Aboriginal people with employment and training opportunities. Employment and training opportunities in northern Saskatchewan are not dependent upon agreements but are dependent upon the multi-party strategy that develops human resource capacities. Moreover, most companies desire local employment because it is less expensive than transporting non-local employees to and from the work site.

Discussion

- It was suggested that Saskatchewan has the most progressive government in terms of looking at their northern region, and therefore, if all governments could become as progressive, the requirement for IBAs might be eliminated altogether. However, the Saskatchewan system is aimed at employment, training, and economic initiatives. It ignores the environmental and social provisions and issues that current IBAs are attempting to tackle.
- There is no developed body of law on IBAs, including need or requirement to ensure local employment. Aboriginal rights need to be asserted in the absence of clear law.
- There are certainly parts of IBAs that should be legally binding and enforceable, for example, financial provisions. However, there are other parts of IBAs, for example business and employment opportunities, that should be flexible so that they can respond to the progress of resource development. If, as a result of numerous employment opportunities in a community, few individuals were available to work for a company, the community could be compensated financially.

- Resource developers want to sign agreements in order to gain greater certainty for their project through commonly accepted principles and provisions of IBAs. For example, with the James Bay Project, Hydro Quebec argued that they did not legally require the consent of the Aboriginal peoples to develop additional features, but they later negotiated a series agreements covering broadly defined remedial measures.
- Successful IBAs require trust. An IBA can be well written with clear clauses, requirements, and enforcement, but it will not be successful if there is no trust. The parties must want to get along and cooperate. They must both understand the rules.
- Ms. Keeping was asked her opinion of the letter by Hans Matthews, President of the Canadian Aboriginal Minerals Association (CAMA), commenting on her draft comparative paper for CARC. The letter was distributed at the workshop. She strongly agreed with CAMA's view that IBAs should not include statements indicating that the purpose of an IBA is to obtain community support for the project. Ms. Keeping also agreed with the comments on the components that should comprise IBAs. IBAs should clearly state which components are impacts on the community, which are the benefits, and which are compensation. People who are unfamiliar with IBAs sometimes wonder why Aboriginal people are getting all these benefits. By clearly indicating what in an IBA is a benefit or compensation, Aboriginal people will be better able to justify why they are entitled to an agreement.
- If an Aboriginal organization did not receive compensation in an IBA or felt they did not receive adequate compensation, compensation could be acquired after the fact depending on the circumstances. It is very hard to determine what the compensation should be before the effects of a mine are encountered, and therefore, compensation mechanisms should be part of IBAs.

Discussion Group Summaries

The workshop participants broke into smaller groups to discuss IBA issues and concerns in relation to revenue sharing, confidentiality and non-disclosure, enforcement and implementation, and environmental assessment. A fifth discussion group on international and national trade agreements, such as GATT (General Agreement on Tariffs and Trade), NAFTA (North American Free Trade Agreement), and MAI (Multilateral Agreement on Investment), was also recommended; however, it was decided that there was not enough expertise in this area to have a productive discussion and that further research is required. The following section summarizes the flip-chart notes, presentation, and recommendations from each group, as well as the discussion that followed each presentation.

1. Revenue Sharing

- The differences amongst Aboriginal communities, such as differences in resources and forms of governance, need to be recognized. As a result of these differences, a formula or standard approach for

IBAs and fees/royalties will not work as there are different categories of land ownership.

- It is difficult for an Aboriginal government to obtain a revenue-sharing regime without mineral rights. Some Aboriginal People with land claims/self-government agreements have already outlined formulas and processes with themselves and with the government to derive and share resource development revenues. For example, resource sharing is outlined in the Yukon First Nations' Umbrella Final Agreement and the Nunavut Agreement. Nunavut Tunngavik Incorporated (NTI) retains mineral rights, while surface access is granted through the Regional Inuit Associations (RIAs). There are fees and royalties for acquisition of mineral rights in Nunavut. NTI and RIAs have set, fees and royalty rates for access to minerals on Inuit owned lands. On Crown lands in Nunavut, NTI receives 50% of the first \$2 million on royalties, and then it receives 5% on an ongoing basis (royalties are paid to the Nunavut Trust). The Yukon First Nations have a similar percentage breakdown for royalties on Crown lands. These percentages seem to be the government standard. Crown royalty rates for minerals have remained relatively unchanged since the 19th century and are now being revised.

There is a royalty sharing accord amongst Northern Tutchone First Nations that goes beyond the Umbrella Final Agreement. There is also an accord among all Yukon First Nations for the sharing of resources (minerals, oil, and gas) and royalties. This accord was created in an attempt to ensure that there are not "have" and "have not" First Nations in the Yukon. If a resource development project is not occurring on a First Nation's lands, the accord has a formula whereby all First Nations can still receive some financial benefit from the project.

- Aboriginal organizations should be aware that there is a potential problem for royalty regimes when mineral deposits are near a boundary of Crown and Aboriginal lands. Which rules apply or take precedence may become an issue. Differences in regimes may also give the Crown or Aboriginal organizations a competitive advantage in attracting mineral exploration.

Aboriginal organizations that are seeking claims should be aware of and consider interactions between royalties and taxation. For instance, royalties on Inuit owned lands are tax deductible for companies whereas royalties on Crown land are not. In the Yukon, royalties paid to First Nations are not taxable if used for community benefit. Yukon First Nations successfully argued that one level of government in Canada does not typically tax another level of government.

- Two known uranium deposits exist within northern Saskatchewan Indian reserves and may be developed in the near future. Saskatchewan First Nations want to negotiate with the provincial government to access royalties and fees for development on these and other deposits. The Northern Dialogue of Leaders is continuing to lobby for negotiations.

In the provinces, unlike in the territories, negotiations on royalties are with the provincial government rather than the federal government.

- In Waswanipi (Cree) territory in Quebec, the mining that began in the 1950s is in decline. As a result, there is currently few opportunities to negotiate revenues. The primary resource in this territory is now forestry. In Mistissini territory, the mining industry has decided to not negotiate revenues, though the Quebec government may be willing to do so. Forestry is also the predominant resource in Mistissini territory. The Cree have received compensation benefits from forestry impacts on their lands, and there is a growing interest in the harvester-support programme in their territories.
- Many claimant groups have access provisions which can allow some control over subsurface development and should allow for some royalties. For example, a few Sahtu community land holding corporations have successfully negotiated royalty provisions in surface access agreements.
- If an Aboriginal organization cannot access royalties, revenues could be provided through equity or ownership of resource development companies. Unfortunately, small communities often do not have the necessary capital to invest in companies. There is also risk of loss in such an investment.

Joint ventures and training with mining companies, governments, or educational institutions can help communities to build the capacity to become more involved in mining; perhaps even to the extent to own and develop their own mines. Preferential contracting can also help provide revenues for communities.

- What is the best use of mining revenues by Aboriginal governments? The main goal should be to use royalties to create a sustainable community. Royalties should be used for community benefits. Revenues could be put into investments and the interest used for community projects. A portion of royalties could be used to support traditional skills and lifestyles. Royalties can be used to set up a business arm of an Aboriginal organization such as a development corporation. Aboriginal communities must be aware that new money in a community means there will be more modern commodities such as snowmobiles and televisions. These new commodities have implications for the maintenance of traditional values, perspectives, and lifestyle. There is a distinction between individual compensation/benefits and collective compensation/benefits. Instead of a development corporation, a trust fund could be set up so that community organizations, such as hunters and trappers associations or training centres, could access the money. The heritage fund concept could also be helpful for compensation and diversification of workforces and communities.

2. Confidentiality and Non-Disclosure

- Confidentiality and non-disclosure occur both during negotiations and after the agreement is signed. In some agreements, such as the Raglan Agreement, only certain pieces of information are to be kept confidential; whereas in other agreements, such as with BHP, the entire agreement is confidential. Confidentiality hinders the freedom to speak and express opinions. It is very difficult for Aboriginal organizations to protect their people, their environment, and their use of the environment if there is confidentiality. Agreements cannot be negotiated without disclosing the information to community members. Community members need to have all the information because their input is needed in the

negotiations and because, in some communities, their consent to the agreement is required. After agreements are reached, there should be disclosure, except perhaps for the notes and data used in negotiations and for the totals of financial compensation. Agreements are negotiated on behalf of Aboriginal communities, and therefore, community members have a right to all the information about a project, including a copy of the agreement. Companies need to know that it is virtually impossible to develop positions that are common to all members of a community and then, on behalf of the community, negotiate a confidential deal.

- IBAs are signed on behalf of all members of an Aboriginal community, but what if one member publicly states that they disagree with a confidential aspect of the agreement or a permit, or leaks confidential information? Where does the liability for this breach lie -- with the Aboriginal organization that signed the agreement on behalf of the community, or the member who spoke out? How can an organization keep community members from speaking out?
- When more than one Aboriginal organization negotiates with the same company and there are not overlap agreements, confidentiality and non-disclosure are greater problems. Each organization negotiates on its own and there is little or no sharing of information. The differences in experience, skills, and knowledge between Aboriginal organizations allow the company to take advantage of the lack of communications. As well, some organizations benefit more than others. Aboriginal organizations want to know what the other organizations are negotiating. Aboriginal groups that are negotiating with a company should be allowed to work together before and during negotiations because disclosure amongst several beneficiaries could promote fairer, more equitable agreements.
- Confidentiality is often included in IBAs to place restrictions on the ability of beneficiaries to object to licenses, permits, company policies, and related matters. As a result, IBAs may not include adequate environmental impacts, monitoring, and approvals. Aboriginal organizations need to ensure that IBAs include open, rigorous, and fair environmental reviews and monitoring, and the ability to enforce the agreement.
- To ensure that Aboriginal organizations have the necessary information for negotiations and to ensure that obligations in the agreement are being met, Aboriginal organizations must have access to corporate financial records and independent analyses. Aboriginal communities may also wish to have direct representation or involvement in the management of the mine.
- Other concerns regarding confidentiality and non-disclosure in IBAs include the following: First, there is a concern that media could leak confidential information. Such an occurrence could have significant effects during negotiations. Second, information from IBAs should be available when an Aboriginal organization is involved in other negotiations, such as for land claims. Third, government seems to be using IBAs and the revenues that Aboriginal organizations may receive as a reason for reducing grants or eliminating eligibility for programme funding. Such a trend is disturbing.

- As a result of confidentiality in IBAs and land claims negotiations, Aboriginal organizations must rely on government. Having trust in government is increasingly difficult with shrinking budgets and a general decline in protection of the public interest. There may be a role for government in preventing the inclusion of confidentiality clauses in IBAs.
- What are the implications of the *Delgamuukw* decision on confidentiality and non-disclosure clauses in IBAs?

3. Impact and Benefit Agreements and Environmental Assessment

- The relationship between IBAs and environmental assessment is not clear. There is a concern that environment is being sacrificed in IBAs.
- Regarding IBAs and environmental assessment (EA), there are two types of Aboriginal organizations: those with land claims agreements and those without land claims agreements.

For Aboriginal people with land claims agreements, the environmental regulatory process and relationships are clearer, but there is still a grey area. There needs to be more discussion on land use permitting (e.g., Gwich'in, Sahtu). A more comprehensive system should be created so that any developer who comes on traditional lands must consult the appropriate Aboriginal government(s). As a result of a land claim agreement, an IBA has greater recognition of environmental impacts because the public process relies heavily on the objectives of the land claim and on community consultation. However, within land claims agreements, the recognition of impacts varies; for example, the Gwich'in Agreement does not recognize environmental impacts as much as does the Nunavut Agreement. For Aboriginal organizations without agreements, the relationship between the environmental regulatory process and IBAs is less defined. The challenge for these groups is that there is no legal requirement for IBAs. Greater effort may be required by non-claimant groups negotiating IBAs to ensure that their concerns regarding the environment are addressed.

- Many IBAs do not have specific requirements for Aboriginal people to be involved in environmental monitoring and review. Even where there are monitoring provisions, they may not be ideal. A weakness in the Raglan Agreement is that the company, Falconbridge, is responsible for environmental monitoring. As a result, nearby Inuit communities are not very involved. The BHP environmental assessment process created the Independent Environmental Monitoring Agency, but in the agreement establishing the Agency, there are no resources provided for direct Aboriginal participation. As a result of the differences in interpretation, the people from Lutsel K'e First Nation originally believed that "independent" meant the Monitoring Agency would be independent of government, but not of the Aboriginal peoples. Now, they realize that the Monitoring Agency carries out its responsibilities independent of the Aboriginal peoples. The use of traditional knowledge by the Monitoring Agency is weak and should be more fully incorporated. The Labrador Inuit Association hopes to develop a similar model to the BHP Independent Environmental Monitoring Agency, but will want to add a mechanism to expressly include traditional

knowledge.

- From an Aboriginal perspective, environmental monitoring must include traditional ecological knowledge (TEK). TEK needs to be put in print, especially in non-claimant areas, to ensure that IBA negotiations are clear on what Aboriginal communities want to see in the agreement regarding environmental impacts. IBAs should include provisions dealing with the use of TEK.
- Regarding mineral development, Aboriginal organizations should start environmental assessment and thinking about environmental impacts as early as possible. Aboriginal involvement needs to occur before development, for example, at the exploration and permitting stage. Aboriginal organizations need to gain some control over exploration because it often causes environmental damage. The damage extends to land beyond where the company wants to develop. Over the past 25 years, government has spent significant sums of money to clean up exploration sites. Exploration activities should require permits that specify abandonment and clean-up procedures. The problem with clean-up solutions in the Mackenzie Valley Resource Management Act is that limited money is required as a bond. In Labrador there is now better control over exploration. For example, companies must complete an archaeological assessment before work begins and must clean-up after exploration. Environmental assessment should occur earlier in the resource development process in an attempt to decrease environmental damage. Many companies, such as BHP, spend millions of dollars before they are required to do any environmental assessment.
- Most workshop participants felt that an IBA should be signed before the implementation of an environmental assessment. After the IBA, a public body does an assessment and ensures that other issues are addressed. An environmental assessment may be a waste of time and money if the company and Aboriginal organization(s) have not yet come to an understanding or an agreement. There is also a concern, for example, with the Gwich'in and Sahtu, that public monies may be spent screening, and then there would be no agreement with the Aboriginal organization(s). By signing an IBA first, Aboriginal people can better ensure that they will be consulted in an environmental assessment. IBAs and environmental assessments can reinforce each other -- those working on an environmental assessment can benefit from information in the IBA, and vice versa.
- Aboriginal organizations need to have the capacity to assess resource development projects and not wait for the public body to begin assessment. Unfortunately, independent assessments are very expensive and Aboriginal land administrations are small. There is declining confidence in government capability and commitment to undertake environmental assessment. For the Voisey's Bay Project, the Labrador Inuit Association (LIA) received intervenor funding from the government, but there is not enough money to do a proper assessment. LIA went directly to the company for funding studies for environmental assessment and for monitoring the company's baseline research. By monitoring the baseline research, LIA is gaining a greater understanding of the project and is, therefore, better able to analyze it. Innu Nation also conducted its own inquiry into the mineral development. There should be adequate money available for Aboriginal organizations to assess projects and to participate in the public environmental assessment. Corporations need to see this issue as a "cost of doing business", and they should deal directly with

traditional land holders/users. There is a need for early community involvement in environmental assessment to ensure proper design and collection of baseline data. There should be a clearly defined federal policy for Aboriginal participation. Government may also have a responsibility to ensure that Aboriginal people have the necessary resources to negotiate proper IBAs that can cover some environmental concerns. Aboriginal involvement cannot be left to corporate “goodwill” because past experiences suggest that too often there is little “goodwill”. The company’s information and research cannot always be trusted to be accurate and sound.

- Within existing IBAs there is a wide range of mechanisms regarding the enforcement of environmental assessment/monitoring and reclamation. For instance, enforcement provisions differ amongst the Inuvialuit Final Agreement, the Gwich’in, Sahtu, and Raglan agreements. Enforcement is very contextual; some IBAs and land claim agreements do not include any enforcement mechanisms.
- The federal government intends to introduce new Metal Mining Liquid Effluent Regulations in 1999 to replace the original regulations from 1977. Under the new regulations, each mine in Canada will be required to develop a procedure to detect and report ecological effects associated with their project. The mines will have to make reasonable efforts to establish stakeholder involvement in the development and implementation of their ecological effects monitoring programs. There will obviously be a need to coordinate some IBAs with these monitoring programs.
- There may be a role for government in setting guidelines for companies on the relationship between environmental assessment and IBAs.

4. Enforcement and Implementation

- Successful implementation, as well as successful negotiation, of IBAs depends upon various factors. The following are a few basic principles for success:
 - The Aboriginal community must be united by a common purpose.
 - Both parties must want to commit to a meaningful agreement.
 - There must be a good relationship between the parties. Mutual respect, dignity, and trust are required. If the relationship is poor, no matter how well-written the agreement is, there will be problems with the implementation.
- Implementation could be improved by the creation of a model IBA or a manual on how to negotiate IBAs. When there is no precedent or model to build upon, negotiations and implementation are more difficult. A model could cover all aspects of development, including reclamation, and could establish clear ground rules for all parties. A standardized or uniform policy would help eliminate inequalities across IBAs.
- Provisions for implementation need to be built into IBAs. For example, IBAs need to have mechanisms

for parties to review the implementation and performance under the agreement. Periodic evaluation of performance should occur as found in the Ulu and Raglan Agreements. Implementation should be seen as a learning process, and the agreement must allow for adaptation while it is being implemented.

- Note that confidentiality and non-disclosure cause problems with implementation to become more acute, and they make enforcement more difficult.
- Harmonization with other bodies of law could be valuable to implementation. For instance, there are overlaps with the objectives of IBAs and the responsibilities of senior government. Activities, such as the collection of environmental data, need to be coordinated and harmonized.
- IBAs should define enforcement procedures. They should ensure that Aboriginal communities are not solely responsible for enforcement. For example, the Inuvialuit Final Agreement states that the government cannot permit or approve the company to do certain activities unless the company demonstrates financial responsibility for impacts and has signed a compensation agreement.

Dispute resolution is critical to enforcement in IBAs. If the parties have a good relationship, dispute resolution will, hopefully, stop or prevent noncompliance because the parties resolve problems as they arise. Without dispute resolution, penalties may be required for noncompliance. An IBA could be written with penalties as the solution for enforcement rather than dispute resolution; however, this solution would not be ideal. The terminology used in IBAs for dispute resolution, penalties, and incentives is very important.

- What is the incentive for a company to progress on implementation? Incentives often include convincing the company that they are going to save money or are going to make a lot of money. LIA is involved in an agreement with a company which includes a joint venture for employment quotas that is linked with revenue. In any year that the company does not employ a given number of Inuit, LIA gains half a percentage point of the company's profit margin and the company loses half a percentage point. The idea is a good one; however, there are some dangers. When negotiating such a clause, the Aboriginal community may have problems achieving a higher target for hiring employees. As well, the company may insist on a reverse objective whereby, if the Aboriginal community cannot supply enough employees to meet the target, then the community is penalized. Little Salmon/Carmacks First Nation did not include any mechanisms for enforcement of employment quotas in their attempted agreement with BYG because both parties recognized that the agreement was for mutual benefit.
- Aboriginal organizations must enter agreements knowing that flexibility in targets, such as employment quotas, is necessary. There are a lot of unknowns in development projects; mines are dependent on markets and government policies with respect to market access. IBAs need to allow for the adjustment of targets according to mine activity. For instance, a review could be held every three years during which targets are revamped if necessary. IBAs might also make special provision for development and implementation of decommissioning and reclamation.

- IBAs should use clear and simple language to allow Aboriginal people to gain a better understanding of the development and implementation process. Results of IBAs should be publicized; for example, via joint communiques (see 3.17 in the Ulu Agreement). Companies have a department which publicizes such results, but companies only publicize the positive aspects. No alternate interpretation is given.

General Issues

Process

- How can we learn from past negotiations of IBAs to improve future negotiations? Some Aboriginal organizations have more experience than others negotiating IBAs, but there is no resource that Aboriginal organizations can access to learn how to negotiate or to learn from each others' experiences.
- Sometimes, when a company negotiates with more than one Aboriginal organization, one or more organizations can get left out of the negotiations.
- Government should clarify the parameters for negotiating IBAs. Government should create a policy that stipulates the requirements for IBAs. The policy should ensure that there are no clauses, such as confidentiality, which demand Aboriginal communities waive their rights.
- Some workshop participants believe that there is no role for federal or territorial/provincial governments beyond the creation of a policy outlining the requirements for an IBA. These participants feel that the government should not be involved in actual negotiations between a company and an Aboriginal organization; an IBA is a private deal. However, others feel that, while the government should not be an active participant in the negotiation, especially regarding Aboriginal groups with which it has treaty relationships, the government does have certain fiduciary responsibilities regarding IBAs that it seems to be putting aside. The government's role and responsibility is to ensure that Aboriginal interests are protected. Unfortunately, Aboriginal communities have often negotiated with few resource and/or an inadequate regulatory framework. There is also a need for a mechanism of policy evaluation not just for individual IBAs but for the concept of IBAs in general.

During the negotiations for the BHP socio-economic agreements, the government neglected its responsibility and seemed to side with the company. The government should have given Aboriginal organizations access to funding so that they could properly participate in the negotiations with BHP. Lutsel K'e First Nation received only \$7,500 from the government. Lutsel K'e was constantly under pressure to get resources to hire the appropriate people to have a clearly understood process, including translation into Chipewyan. A DIAND representative was noted as having said in the past that, if the government had given more support to the Aboriginal communities during the negotiations with BHP, the government would have been accused of paternalism and unwarranted involvement. Some DIAND

representatives probably believe this statement; however, for others, it is a convenient excuse to cover the fact that government funds are very limited. It was suggested that government would have more money to contribute to Aboriginal organizations if the government had not spent vast amounts of money in the past to clean up the environment after industry exploration and development.

The Nunavut Agreement has various government checks to ensure that the interests of Inuit are protected. Perhaps there should be similar territorial/federal policy. As well, Aboriginal people must be assertive. They must know what their rights are. Perhaps Lutsel K'e was too trusting and should not have allowed others to negotiate on their behalf, mistakenly thinking that their interests were being protected.

- Chiefs, councillors, negotiators, and community leaders should not be the only people who ratify IBAs. All members of the community should be given the opportunity to vote on ratification of an agreement. There should be community consent before an IBA is signed.

Employment and Labour

- In Saskatchewan, the Multi-Party Training Plan set a goal that within 5 years, out of 700 available jobs, 50% of the employees would be Aboriginal people. The 3 or 4 companies in the area were asked to give projections to the Multi-Party Training Group on the kinds and number of jobs that would become available within these 5 years. Aboriginal people are now being trained to try to meet the 50% objective.
- Lutsel K'e First Nation found that some of their people did not have the training or education to be employed at the BHP mine. A government training programme was implemented to certify these individuals.
- How do Aboriginal organizations achieve gender equality in mining employment? Labrador Inuit women want more employment, especially in non-traditional jobs. Upon employment, they also want separate living quarters and separate counseling. LIA has come up with some creative ideas but is having problems convincing the company to accept them. LIA is considering filing for an affirmative action programme under the Newfoundland human rights legislation.
- Would union membership by Aboriginal people working at a mine preclude them from participating in the benefits of an IBA? It may be possible to work with organized labour and companies to set Aboriginal hire targets as part of collective agreements.

Social Impact Monitoring

- The Raglan Agreement between the Makivik Corporation and Falconbridge says nothing about social impact monitoring. The Makivik Corporation cannot get funding from Falconbridge to do their own research on the social impacts of the mine development because the company says it is not their responsibility. At the same time, Makivik cannot get funding from the government because the

government says it is the company's responsibility. It may be worthwhile to define social impact assessment roles and responsibilities in IBAs.

- Yukon First Nations have a development assessment process outlined in their Final Agreement, and this process is currently being drafted into legislation. The process was created so that Yukon First Nations will have strong, community driven reviews and screenings of projects. The focus of the process is the project's impacts on the social fabric of the community. Any IBAs that are signed will have to reflect the legislated assessment process. The process will require that all proponents of projects apply to designated First Nations officers. During the review, proponents must outline a social impact assessment to determine the impacts on the community and surrounding area. When a panel review involves First Nation land, two-thirds of the panel will be First Nations' representatives. When the review does not directly involve First Nation land, one-third of the representatives will come from Yukon First Nations.

Sustainability

- Mining is inherently unsustainable because natural resources are exhaustible. Aboriginal communities should have a diversified economic development strategy. They should not rely on one type of resource exploitation. Aboriginal organizations may be able to negotiate IBAs and royalties in other resource sectors. Because natural resources are exhaustible, Aboriginal organizations need to build lasting benefits. They need to build the capacity to take advantage of opportunities. Aboriginal communities may get their best return by investing in education and training. The challenge is to maximize benefits and reduce negative impacts. For example, a resource development project could result in employment and revenues for 15 years and cause environmental and cultural damage for 50 years. Communities must be sure that the positives outweigh the negatives in the long run. Companies need to consult with Aboriginal organizations as early as possible (ie. at the conceptual stage) so that Aboriginal organizations can create long-term plans or visions to maximize benefits.

Future Actions/Closing Recommendations

Workshop participants made a number of recommendations at the final plenary session. It was recommended that a model or draft IBA be prepared for areas that do not have settled land claims. This draft should be a guide or protocol and should outline the pros and cons associated with IBAs. It should use clearer definitions and less subjective wording than occurs in most existing IBAs. Perhaps such a draft IBA could be a project for the Canadian Institute of Resources Law (CIRL). It was noted that the Canadian Aboriginal Minerals Association (CAMA) has produced a model IBA, and the Canadian Association of Petroleum Producers (CAPP) has done work on oil and gas benefits. A separate guide of IBA pros and cons needs to be prepared for industry and government. CIRL is undertaking some work in this area which should prove useful.

To continue information sharing on IBAs, a bibliography of resources and contacts on IBAs should be developed. There could be an ongoing forum or committee that could act as a clearinghouse for this

information.

CARC agreed to produce a written version of the workshop proceedings that will be sent to all workshop participants. Workshop participants agreed that the Canadian public needs to be made more aware of the issues surrounding IBAs. To this end, CARC will produce a special issue of *Northern Perspectives* that will summarise the workshop proceedings as well as some of the written material on IBAs, such as Janet Keeping's comparative paper. The issue will elaborate on the need for better industry understanding, and for industry-wide recognition, of IBAs (e.g., the Whitehorse Mining Initiative model). The text of this issue will be reviewed by all workshop participants prior to publication. Some participants inquired whether the issue could be translated into French or Aboriginal languages, or be produced as a video. If sufficient funds are found, translated issues or a video might be considered.

Research Areas

Throughout the workshop, participants indicated that the following areas concerning IBAs require more research:

- the implications of the *Delgamuukw* decision on IBAs and royalties, and how the decision can be made to work for Aboriginal peoples;
- contract law as it relates to IBAs;
- mechanisms/conditions for successful implementation of IBAs;
- restrictions on Aboriginal sovereignty (for example, clauses in IBAs that prohibit the beneficiary from objecting to certain parts of the resource development process);
- confidentiality issues, for example,
 - the distinction between keeping certain information in an agreement confidential and keeping the whole agreement confidential, and
 - the effects of confidentiality requirements on the environmental aspects of IBAs;
- the role of government regarding IBAs;
- the implications of international and multi-national trade agreements (GATT, NAFTA, MAI); and
- international comparisons of IBAs.

Appendices

- A. Impact and Benefits Agreement Workshop Agenda
- B. List of Invitees to the Impact and Benefits Agreement Workshop
- C. List of Participants at the Impact and Benefits Agreement Workshop
- D. Major Points from the IBA Workshop

Appendix A

IBA WORKSHOP, May 29-31, 1998 -- Yellowknife, NT FINAL AGENDA Copper Room, Yellowknife Inn

Friday, May 29

afternoon arrival in Yellowknife

6:00 PM **Reception** (informal) -- **Great Hall, Legislative Assembly**
to 8:00 PM - hosted by Hon. Stephen Kakfwi, Minister of Resources, Wildlife, and Economic
Development, Government of the Northwest Territories

Saturday, May 30 -- Copper Room, Yellowknife Inn

9:00 AM ***Welcoming Remarks and Introductions***
-- Chairpersons (Chief Fred Sangris, Barney Masuzumi)
-- host First Nation (Yellowknives Dene)
-- Canadian Arctic Resources Committee
- purpose of the workshop
- review and approval of the agenda

9:30 AM ***Presentations on IBAs Negotiations and Implementation***
-series of half hour presentations by Aboriginal organisations
-overview of their agreement
-insights into negotiations
-implementation issues
-question/answer period

Kitikmeot Inuit Association -- the ULU Project with Echo Bay Mines
presenters: Charlie Evalik, Keith Peterson

10:00 AM **Makivik Corporation -- the Raglan Agreement with Falconbridge**
presenter: Robert Lanari

10:30 AM Break

- 10:45 AM **Prince Albert Grand Council**
 presenter: Don Deranger
- 11:15 AM **Little Salmon/Carmacks First Nation**
 presenters: Ed Shultz, Chris Noble
- 12:00 PM Lunch; catered by the Yellowknife Inn
- 1:00 PM ***Presentations continue***
- Labrador Inuit Association -- the Voisey's Bay Project with Inco**
 presenter: Chesley Andersen
- 1:30 PM ***Discussion (based on presentations)***
- 2:15 PM ***Presentation on Legal Basis for Impact and Benefits Agreements***
 -- Janet Keeping, Canadian Institute of Resources Law
- 3:00 PM Break
- 3:15 PM ***Discussion Groups***
- 1 - Revenue Sharing -- royalties, equity and other forms
 2 - Confidentiality and Non-Disclosure
 3 - IBA's and Environmental Impact Assessment -- sequencing
 4 - Enforcement and Implementation
 5 - Implications of International and National Trade Agreements
 (NAFTA, GATT, MAI)
- 5:30 PM Workshop Ends for the Day

Sunday, May 31 -- Copper Room, Yellowknife Inn

- 9:00 AM ***Final Presentation on IBAs Negotiations and Implementation***

 Yellowknives Dene First Nation -- the NWT Diamonds Project with BHP
 presenter: Darrell Beaulieu
- 9:30 AM ***Discussion Group Presentations/Reports***
 - approximately half an hour for each
 9:30 Group 1
 10:00 Group 2
- 10:30 AM Break
- 10:45 AM ***Discussion Group Presentations, Continue***
 10:45 Group 3
 11:15 Group 4
- 12:00 PM Lunch; catered by the Yellowknife Inn
- 1:00 PM Group 5
- 1:30 PM ***Recommendations / Future Actions***
- 2:30 PM ***Closing and Thank-You***

Appendix B

Invitees to the Aboriginal Peoples' Impact and Benefits Agreement Workshop *Yellowknife, May 29-31, 1998*

Aboriginal Organizations

Invitations were sent to the chief or president of each organization, unless otherwise indicated.

Canadian Aboriginal Minerals Association

Cree Nation of Mistissini
-Elijah Awashish

Cree Nation of Waswanipi
-Samuel Gull (Director General)

Cree Regional Authority
-Alan Penn

Deh Cho First Nations

Gwich'in Tribal Council

Innu Nation

Kitikmeot Inuit Association

Labrador Inuit Association

Liard First Nation

Little Salmon/Carmacks First Nation

-invitation to Ed Schultz (Director of Implementation) as well as Chief Eddie Skookum

Lutsel K'e Dene First Nation

Makivik Corporation

-Robert Lanari (Director of Special Projects) as well as President Zebedee Nungak

Barney Masuzumi, Research Director, Dene Cultural Institute (co-chair for the workshop)

Na-cho Ny'ak Dun First Nation

Nahanni Butte First Nation

North Slave Metis Alliance

Nunavut Tunngavik Incorporated

-Wayne Johnson (Mineral Resources Manager)

Paulatuk Community Corporation

-Chairperson Reuben Green

Prince Albert Grand Council

-Vice Chief John Dantouze

Ross River Dena Council

Sahtu Secretariat Incorporated

Taku River Tlingit First Nation

-Ed Anderson

Treaty 11 Dogrib Tribal Council

-Violet Camsell-Blondin as well as Grand Chief Joe Rabesca

Tr'on Dek Hwech'in First Nation

-Edward Kormendy as well as Chief Steve Taylor

Tulita District Land Corporation

-Clarence Campbell (District Coordinator)

Yellowknives Dene First Nation

-Darrell Beaulieu (Deton'cho Corp.) as well as Chiefs Fred Sangris and Jonas Sangris

Non-Aboriginal Organizations

Canadian Arctic Resources Committee

- Erin Eacott (Research Assistant)
- Robbie Keith (Executive Director)
- Kevin O'Reilly (Research Director)
- Brenda Parlee (Consultant)
- Lindsay Staples (Board Member)

Canadian Institute of Resources Law

- John Donihee
- Janet Keeping

Other Individuals who were informed about the workshop and sent an agenda or the binder of background documents:

- Jerry Asp (Canadian Aboriginal Minerals Association, Vice President)
- Jennifer Ellis (Yukon Conservation Society)
- Andrew Gaule (Nahanni Butte First Nation, and North of 60 Training and Consulting)
- Rick Hardy (lawyer for Sahtu Secretariat Inc.)
- Larry Innes (Innu Nation)
- Cindy Kenny-Gilday
- Jamie Kneen (Prince Albert Grand Council)
- Shelley Kaufman (National Round Table on the Environment and Economy)
- Doug Matthews (GNWT – Oil, Minerals and Gas)
- Christine Lee (Water and Duncan Gordon Foundation)

- Norm Meek (Akaitcho Treaty 8)
- Steve Nitah (Community Liason, Diavik Diamond Mines Inc.)
- Bernard Penee (lawyer for Makivik Corporation)
- Chief Ron Robillard (Black Lake Denesuline First Nation)
- Judy Rowell (Labrador Inuit Association, and CARC Board member)
- Norm Snow (Inuvialuit Joint Secretariat)

Appendix C

Aboriginal Peoples' Workshop on Impact and Benefits Agreements Yellowknife, May 29 - 31, 1998

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Yellowknives Dene First Nation (Peter Liske)

Appendix D

Major Points

from the Aboriginal Peoples' Impact and Benefits Agreement Workshop

Yellowknife, May 29-31, 1998

The following are points that were made during discussion at the Impact and Benefit Agreement (IBA) Workshop and which CARC feels are significant and should be highlighted. They should prove helpful to communities facing mineral development, those negotiating IBAs and those in the midst of IBA implementation. We hope that they may serve as broad principles and provide guidance or assistance.

Purpose of Impact and Benefit Agreements

- The purpose of an IBA is *not* to gain an Aboriginal organization's support for a mining project. Support or acceptance of a project should not be included in IBAs.
- There are many people unfamiliar with IBAs who wonder why Aboriginal People are receiving benefits. By clearly indicating what in an IBA is a benefit or compensation, Aboriginal people will be better able to explain why they are entitled to them.

Preparing for Negotiations

- A Memorandum of Understanding (MOU) can help to get a company to negotiate an IBA.
- There is no clear regulatory framework for IBAs. Legal requirements to negotiate an IBA vary according to location. Even where IBAs are legally required, there are often no legal requirements for the contents of IBAs.
- Companies need to consult with Aboriginal organizations as early as possible (i.e. at the conceptual stage) so that Aboriginal organizations can create long-term plans or visions to maximize benefits.
- To ensure that Aboriginal organizations have the necessary information for negotiations, they must have access to corporate financial records and independent analyses.
- It is important for Aboriginal People facing negotiations to have an understanding of international markets in minerals.

Negotiations

- IBAs cannot be negotiated without disclosing the information to community members. Companies need to know that it is virtually impossible to develop positions on behalf of all members of a community and to then negotiate a confidential deal. Community members need to have all the information because their input is needed in the negotiations and their consent may be legally required. There may be a role for government in preventing the inclusion of confidentiality clauses in IBAs.
- When more than one Aboriginal organization negotiates with the same company, the organizations want to know what each organization is negotiating. Aboriginal groups that are negotiating with a company should be allowed to work together before, during, and after negotiations because disclosure amongst several beneficiaries could promote fairer, more equitable agreements.
- The government has certain fiduciary responsibilities regarding IBAs that it seems to be putting aside. The government's role and responsibility is to ensure that Aboriginal interests are protected. Unfortunately, Aboriginal communities have often negotiated with little funding or regulatory support. The Nunavut Agreement has various government checks to ensure that the interests of Inuit are protected. Perhaps there should be similar territorial/federal policy.

Content of Impact and Benefit Agreements

- A good project description is necessary in IBAs so that companies cannot deviate from original plans. If a project expands or changes, there should be an opportunity to reopen the agreement.
- Aboriginal people should be careful to not compromise their governance powers or their ability to properly monitor their lands by signing an IBA. For example, if an Aboriginal government has a mandate to protect its lands and resources, it may be wise not to sign an IBA that forbids objecting to a mining company's environmental procedures or regulatory applications. It should be possible to enter into an arrangement for mutual benefit without negotiating government powers. The Aboriginal government could remind the company that they are not the body that regulate environmental performance as this is usually done by territorial and/or federal governments or co-management bodies.
- Parts of IBAs, such as financial provisions, should be legally binding and enforceable. Other parts, such as business and employment opportunities, should be flexible so that they can respond to the progress of resource development. There are many unknowns in development projects; a mine could be influenced by market fluctuations or a natural disaster. IBAs need to allow for the adjustment of targets according to mine activity and economic opportunities.

- Aboriginal communities differ in terms of natural resources, capacity and forms of governance. As a result of this variety, a formula or standard approach for IBAs and fees/royalties will not work.
- Aboriginal organizations that are seeking claims should be aware of and consider interactions between royalties and taxation. Differences in taxes or royalties may affect the ability of either the Crown or Aboriginal government to attract mineral exploration.

Training and Employment

- IBAs may not be necessary to provide Aboriginal people with employment and training opportunities. In some areas, government may make project approval conditional upon local training and employment. Resource developers may desire local employment because it is less expensive than transporting outside employees to and from the work site.
- If there is potential for future mines, skill inventories and training should begin early.
- Youth programs that build self-confidence and motivation are important because they can assist with employment.
- Mining is inherently unsustainable because natural resources are exhaustible. Aboriginal communities should have a diversified economic development strategy. Communities should consider how non-renewable resource development can contribute to more sustainable economic activities. Communities may get their best return by investing in education and training.

Traditional Knowledge

- It is important to specify the role of Traditional Knowledge (TK) in IBAs, especially in areas without settled claims. From an Aboriginal perspective, environmental management of mining projects must include TK.

Implementation

- Successful negotiation and implementation of IBAs depends upon various factors. The following are a few basic principles for success:
 - The Aboriginal community must be united by a common purpose.
 - Both parties must want to commit to a meaningful agreement.
 - There must be a good relationship between the parties. Mutual respect, dignity, and trust are required.

If the relationship is poor, no matter how well-written the agreement is, there will be problems with the implementation.

- Provisions for implementation need to be built into IBAs. For example, IBAs need to have mechanisms for parties to review the implementation and performance of the agreement. Implementation should be seen as a learning process, and the agreement must allow for adaptation while it is being implemented.
- Aboriginal organizations must have access to corporate financial records and independent analyses to ensure implementation is proceeding in a timely and fair manner. Aboriginal organizations may also wish to have direct representation or involvement in the management of the mine.
- For consistency and clarity, it is helpful if there is some overlap of Aboriginal organization representatives and mining company officials involved in IBA implementation who directly participated in negotiation of the agreement. This helps avoid renegotiate of definitions or other matters.
- Harmonization with other bodies of law could be valuable to IBA implementation. For example, there are overlaps with the objectives of IBAs and the responsibilities of senior government. Activities, such as the environmental monitoring, need to be coordinated and harmonized.
- IBAs should use clear and simple language to allow Aboriginal People to gain a better understanding of the development and implementation process. Results of IBAs should be publicized; for example, via joint communiqués.

Enforcement

- IBAs should define enforcement procedures. They should ensure that Aboriginal communities are not solely responsible for enforcement. It may be possible to convince government to withhold approvals unless the company demonstrates financial responsibility for the impacts and a compensation agreement has been concluded.
- IBAs are not simply contracts, but they can be legally enforced as contracts if they are written in the appropriate language. Existing IBAs tend to use unclear definitions and subjective wording which decreases their ability to be enforced. IBA's with dispute resolution mechanisms can likewise still be treated, or enforced, as contracts.
- Clear and concise terminology used in IBAs for dispute resolution, penalties, and incentives is very important. Incentives for industry to negotiate IBAs are often in the form of convincing the company that they are going to save money or are going to make a lot of money.

Environmental Assessment and Impact and Benefit Agreements

- By signing an IBA first, Aboriginal people can better ensure that they will be consulted in an environmental assessment.
- IBAs and environmental assessments can reinforce each other -- those working on an environmental assessment can benefit from information in the IBA, and vice versa.
- There should be adequate resources available for Aboriginal organizations to assess projects and to participate in public environmental assessments. Corporations need to see this issue as a “cost of doing business”. There should be a clearly defined federal policy for Aboriginal participation. Government may also have a responsibility to ensure that Aboriginal People have the necessary resources to negotiate good IBAs that can cover some environmental concerns.
- There may be a need to coordinate IBA monitoring provisions with new ecological effects monitoring requirements evolving as part of regulatory change.

Future Impact and Benefit Agreement Projects and Research

- To continue information sharing on IBAs, a bibliography of resources and contacts on IBA's should be developed. There could be an ongoing forum that could act as a clearinghouse for this information.
- A resource book on IBAs should be prepared drawing on current agreements. It should outline the pros and cons associated with IBAs and show various options for specific provisions, including purpose, financial arrangements, monitoring, enforcement, dispute resolution and other matters.
- Industry-wide awareness and acceptance of IBA principles needs to be developed.
- The Canadian public needs to be made more aware of the issues surrounding IBAs.
- There needs to research in the following areas:
 - the implications of the *Delgamuukw* decision for IBAs;
 - the role of government regarding IBAs; and
 - the impact of international and financial agreements on IBA.