

Impact and Benefit Agreements: Are they working?

Jason Prno
Trailhead Consulting
North Bay, Ontario

&

PhD Student
Department of Geography and Environmental Studies, Wilfrid Laurier University
Waterloo, Ontario

Dr. Ben Bradshaw, Associate Professor
Department of Geography, University of Guelph
Guelph, Ontario

Dianne Lapierre, Master's Graduate
Department of Geography, University of Guelph
Guelph, Ontario

Abstract

The emergence of Impact and Benefit Agreements (IBAs) in the Canadian mining sector has been read by many as a positive governance innovation. Negotiated directly between mineral resource developers and Aboriginal communities with limited government interference, IBAs serve to manage impacts associated with a mining project and deliver tangible benefits to local communities. Notwithstanding their increasing use and significance, limited systematic analysis has been undertaken to determine whether they are, in fact, working. This paper reports on the effectiveness of a number of IBAs negotiated in support of three northern Canadian diamond mines, drawing on evidence from time-series data, key informant interviews, and focus group meetings in Yellowknife and Dettah, NWT, and Kugluktuk, NU. While some deficiencies were apparent and perceptions of effectiveness varied somewhat by Aboriginal community, the IBAs were generally found to be meeting their objectives, especially with respect to the delivery of benefits. For Aboriginal communities affected by mineral development in the Canadian North, this represents a significant change to typical outcomes of the past. Moving forward, research on IBA effectiveness needs to adopt a longer timeframe and begin to gauge the degree to which IBAs are able to address long-standing concerns associated with hinterland resource extraction beyond their agreement-specific objectives.

Biographies

Jason Prno is the owner of Trailhead Consulting (www.trailheadconsulting.ca), which provides sustainability services to industry, government, Aboriginal organizations, and the not-for-profit sector. His work in the mining sector focuses on community engagement, environmental assessment, and climate change adaptation. He is also a PhD student at Wilfrid Laurier University conducting research on governance arrangements that encourage successful community engagement outcomes in the mining sector. This paper stems from his MA thesis research completed in the Department of Geography at the University of Guelph, with support from the Social Sciences and Humanities Research Council.

Ben Bradshaw is an associate professor of Geography at the University of Guelph. His 7-year old research program on Impact and Benefit Agreements (IBAs) has sought to investigate their origins, effectiveness, and relationship to regulatory systems governing mining developments in the Canadian north. He is the originator of the IBA research network (see www.impactandbenefit.com), which brings together academics, regulators, Aboriginals, industry representatives, and consultants for the purpose of identifying knowledge gaps around IBAs and facilitating research to address those gaps.

Dianne Lapierre is a Master's graduate from the Department of Geography at the University of Guelph. In support of this paper, Dianne completed focus group meetings with the membership of the North Slave Métis Association in Yellowknife.

Introduction

While mining has long been a pillar of the Canadian economy, mining projects have also generated impacts for surrounding landscapes and communities. Historically, Aboriginal people have disproportionately experienced these impacts given their extensive use of the land and yet have received few, if any, benefits. Today, there are approximately 1200 Aboriginal communities within 200 km of mines and exploration properties (Mining Association of Canada, 2009); these communities have clearly signaled their unwillingness to accept ‘business as usual’, and the Canadian mining sector has responded. One noteworthy example of this is the emergence of Impact and Benefit Agreements (IBAs), negotiated directly between mine developers and Aboriginal communities with limited if any state involvement.

IBAs are essentially supra-regulatory tools that are meant to address outstanding impacts from mine developments and ensure that benefits are delivered to Aboriginal communities proximate to or impacted by mine developments (Galbraith et al., 2007). Provisions that could be negotiated and included in an IBA are virtually limitless, but for Aboriginal signatories they commonly include: recognition of rights; royalty-type payments; opportunities for employment and training; opportunities for community economic development; and additional environmental and cultural protection measures (Kennett, 1999; Sosa and Keenan, 2001; Public Policy Forum, 2005; O’Faircheallaigh, 2006). In asserting their Aboriginal and treaty rights, the implication is that Aboriginal people view the IBA negotiation process as de facto recognition of their authority within their territory (Public Policy Forum, 2005). For industry signatories, IBAs serve a variety of aims, the most significant of which, arguably, is the securing of a social license to operate (Lapierre and Bradshaw, 2008). Given this and other motivations, such as reputational risk and access to local labour, it is no wonder that the negotiation of IBAs has become institutionalized in Canada’s mining sector notwithstanding a paucity of law requiring their use.

This shift has been welcomed by many who see IBAs as generally progressive, especially when paired with ‘best practice’ Environmental Assessment; of course, this reception is predicated on the assumption that IBAs are functioning as expected. Problematically, little research has been completed¹ to test this assumption notwithstanding numerous calls to do so (e.g. O’Faircheallaigh, 2000, 2004; Sosa and Kennan, 2001; Galbraith et al., 2007). In short, are IBAs working? This brief paper responds to this question based on the case of the fourteen IBAs signed between 1996 and 2007 in support of the three diamond mines to the northeast of Yellowknife in the Northwest Territories.²

The paper follows in four further sections.³ First, the approach adopted to assess the effectiveness of the region’s IBAs is outlined. Following this, some evidence of their effectiveness is offered: first from the top-down; and second from the bottom-up. Finally, a brief summary is offered alongside some suggestions for advancing research in the future.

Research Approach

Unlike some existing analyses, the approach chosen to assess the diamond mines’ fourteen IBAs follows program evaluation convention; evaluations should assess a program’s outcomes relative to its stated objectives (O’Faircheallaigh, 2002). While this would ideally involve an assessment of the degree to which

¹ Exceptions include Dreyer and Myers (2004), North-South Institute (2006), and Hitch (2006).

² For a list of these, including their signatories, see www.impactandbenefit.com

³ This paper largely summarizes Prno (2007) and Prno et al. (2009), which should be reviewed for further empirical insight. For additional insight to the approach used in this research, see Prno and Bradshaw (2008).

each term of the fourteen IBAs has been achieved, the confidential nature of the agreements and the, admittedly naïve, attempt to make sense of the performance of all fourteen IBAs led the researchers to assess the degree to which the agreements, in aggregation, were meeting their general aims as identified by Galbraith et al. (2007). These authors argued, based on a evaluation of the Environmental Assessment process of the Mackenzie Valley Environmental Impact Review Board - the agency responsible for the review of the three diamond mines – and the completion of interviews with key informants from Aboriginal organizations and communities, government officials, and consultants in and around Yellowknife, that the region’s IBAs were generally established in order to:

- build positive relationships and trust between the mine developers and regional Aboriginal communities;
- secure local benefits for Aboriginal communities;
- relieve capacity strains in these Aboriginal communities; and
- ensure adequate ‘follow-up’ to the environmental assessment (EA) process.

By adopting these general objectives, our assessment of IBA effectiveness was afforded targets against which ‘effectiveness’ could be determined. The evidence used to measure this derived from three exercises:

- organizing and assessing regional scale secondary socio-economic data in time series format;
- key informant interviewing; and
- focus group meetings with members of three IBA signatory communities in Yellowknife and Dettah, NT, and Kugluktuk, NU.

In combination with general participant observation, these three approaches delivered distinct but complementary data thereby allowing for triangulation of research results.

A ‘top-down’ view of IBA Effectiveness

‘Top-down’ perspectives on the effectiveness of the region’s fourteen IBAs were assembled from secondary socio-economic data and key informant interviews. The former source of insight, which derived from annual reporting by the Government of the Northwest Territories as required of them by various socio-economic agreements signed with the mine developers and ‘impacted’ Aboriginal communities,⁴ were assessed primarily to identify evidence consistent with the delivery of certain IBA benefits to communities. As per these data (GNWT 2009), socio-economic conditions in the impacted Aboriginal communities improved over the past two decades with respect to income, employment, education, and the number of business ventures. Indeed, the communities’ rate of growth, expressed in average annual percentage change over the period 1989 to 2007, outpaced that of the Northwest Territories with respect to income, the percentage of taxfilers with more than \$50,000 income, employment,⁵ the percentage of population with at least high school education, and the number of registered businesses (see Table 1); the same was true as compared to Canadian averages for all the same indicators save for (annual growth in) the percentage of population with at least high school education. Though far from conclusive with respect to the performance of the region’s IBAs, and especially their payment, preferential hiring, and business opportunity provisions, the observance of a positive trend for this period is noteworthy.

⁴ ‘Impacted’ Aboriginal communities are those communities that were part of the “local study area” in the BHP, Diavik, and De Beers environmental assessments; they also represent the Aboriginal IBA signatories.

⁵ In fact, the indicator is average annual change in the unemployment rate, reductions in which are treated as gains in employment though this is not always true.

Table 1: Average annual change in select socio-economic indicators over the period 1989 to 2007

Average annual change (over the period 1989 – 2007) in...	Impacted Aboriginal Communities	Northwest Territories	Canada
Income	+6.98%	+3.20%	+3.90%
Percentage of taxfilers with more than \$50,000 income	+1.37%	+1.17%	+0.93%
Unemployment rate	-1.06%	-0.16%	-0.23%
Percentage of population with at least high school education	+0.56%	+0.40%	+0.90%
Number of registered businesses	+0.62%	+0.005%	-

Interviews with 32 key informants, completed in Yellowknife, NT and the surrounding region in 2006 and Kugluktuk, NU in the summer of 2007, provided a complementary source of evidence of IBA effectiveness. Again, given their relative positions within, or more commonly outside, the signatory communities, their opinions largely reflect a ‘top-down’ view.⁶ On the whole, the key informants’ impressions of the region’s IBAs were positive. Respondents noted that IBAs “can be vital instruments of economic change for communities” and provide “discernable benefits that make a difference”. While viewed positively in aggregation, the informants’ perceptions varied by each Aboriginal signatory community and even by each agreement signed. Communities that appeared to benefit most from their IBAs were those that had garnered experience with prior negotiations, secured some form of authority over their traditional lands, and/or had a heightened political influence in the region. A settled land claim, for example, tended to generate greater community capacity to negotiate and implement ‘good’ agreements. This also seemed to influence the form and style of benefits distribution among communities, which was a source of conflict for some.

More specifically, and consistent with the chosen research approach, a vast majority of the key informants explicitly stated that they viewed the regions’ IBAs as delivering on their aims to *build positive relationships and trust*, and *secure local benefits*. Informants expressed comments such as “relationships and trust are there” and “[the mining company] is always right there when we need to talk about something.” At the same time, some labelled relationship-building as “a work in progress” or noted that “we have good working relationships, until it comes to money”. With respect to benefit delivery, informants identified employment, training, business opportunities and financial compensation as obvious examples, with one respondent going so far as to suggest that IBA benefits “are breaking the poverty cycle” that many communities have long faced. Though all recognized the provisioning of benefits via the IBAs, some regarded them as akin to “trinkets and beads” given both the profits generated by the mines and increasing recognition of Aboriginal title to the land. A smaller majority of the key informants viewed the IBAs as *addressing capacity strains* in the signatory communities, with even fewer suggesting that these strains had been *relieved*; as one respondent stated “capacity building won’t happen overnight.” Finally, most respondents felt that the IBAs did not *ensure adequate follow-up*, but evidently were expressing frustration with the mineral developers’ unwillingness to renegotiate agreements once signed, rather than speaking to the issue of *EA follow-up*. Indeed, a majority of informants regularly spoke of on-going communication with the mining firms, which suggests that, indeed, IBAs have enabled *EA follow-up*.

⁶ Key informants were those individuals whose jobs dealt with any or all of the region’s IBAs or their deliverables, be they administrators from Aboriginal signatory communities, government officials, industry personnel, or consultants.

A 'bottom-up' view of IBA Effectiveness

More 'bottom-up' perspectives on IBA effectiveness were assembled from focus groups conducted in communities that had signed IBAs in support of the diamond mines. More specifically, a total of ten focus groups were conducted in 2006 and 2007 with distinct groups of elders, youth, mine workers and mine worker family members in the communities of Dettah, NT (Yellowknives Dene First Nation), Yellowknife, NT (North Slave Métis Alliance), and Kugluktuk, NU (Kitikmeot Inuit Association) in an effort to elicit responses pertaining to IBA effectiveness from those who directly experience IBA outcomes.⁷ Focus group discussions revealed many positive opinions of the IBAs that had been signed; however, perceptions of IBA effectiveness, as assessed in terms of the degree to which their four general aims (see Galbraith et al., 2007) had been achieved, varied from agreement to agreement, community to community, and sometimes from focus group to focus group within a single community. This is understandable given that the precise context surrounding each of the fourteen agreements varied as do the terms of each agreement. For example, the region's first agreements, signed in haste in support of the Ekati mine, were viewed with pride by some focus group participants and barely veiled contempt by others (e.g. "[They exist] to shut us up... They threw [the IBA] at us; take it or leave it!").

With respect to *building positive relationships and trust*, not one of the three communities viewed their IBAs as wholly achieving this aim. Focus group discussions drew attention to many IBA-supported company activities that were viewed as contributing to better relations and trust, such as regular communication with the communities, site visits, culturally sensitive employment terms for Aboriginal workers, and community sponsorships and donations. However, it was often said that mining companies are driven by profits and self interest, and hence many focus group participants questioned the companies' trustworthiness. Some also questioned whether the largely financial basis of IBAs could ever generate a true relationship; in response to the question of trust, one youth responded with:

It's hard to say, especially if it's based around money. It's hard to say, like, 'I trust these people', because it's not like I'd go up to somebody and say 'here's \$20; thank you'.

Ongoing issues related to employment were also identified as problematic for relationship-building, with participants mentioning instances where Aboriginal workers had been poorly treated. Finally, the poor legacy generated by past mining operations in the region and even around the world also appeared to negatively influence community perceptions of the mining companies operating in their region.

The issue of *securing benefits* tended to dominate focus group discussions, which is understandable given that benefits are the most visible and contentious part of an IBA. Though sometimes praised and widely recognized as being 'delivered' via employment, training, scholarships for youth, community sponsorships and donations, and payments to Aboriginal organizations and individuals, few focus groups expressed complete satisfaction with the total package of benefits and their distribution within the communities. For example, while employment was often noted as a benefit, it was often "hard to get a good job." And while job-specific training was provided to community members, there was "not that much of it" and it was geared, once again, to blue-collared "dirty" jobs. Others viewed the total package of benefits as simply insufficient given that the diamond mines had been built on "our land", and were generating profits for their owners that were vastly disproportionate to the financial benefits received by the IBA signatories. This line

⁷ Focus group respondents in Kugluktuk also commented on the IBA they signed with Tahera Diamond Corporation for the Jericho Diamond Mine in Nunavut. The IBA was signed in September 2004 and the mine operated for a short period before going into receivership in April 2008. Community perspectives on this IBA are included in the discussion.

of focus group discussion often shifted towards community infrastructure and service needs (e.g. improved roads, recreational facilities, housing, increased policing and health care, etc.). With respect to the distribution of benefits, those with employment in the mines were seen as the primary beneficiaries through the “big paycheques” they earn. Ironically, while these ‘lucky’ individuals are clearly benefiting financially, their employment is not without costs to them and their families; one wife of a mine worker working two-week shifts characterized her husband as a visitor, noting that they have to “catch up and fit everything into a 2 week period...you live your life in 2 week periods.”

With respect to the degree to which the fourteen IBAs are *relieving capacity strains*, not one of the focus groups suggested that this aim had been wholly met, though participants widely recognized that the IBAs had contributed to increased capacity by creating employment and training coordinators, augmenting the number of knowledgeable and capable employees within community organizations, and enabling community-based environmental monitoring and advisory groups. A lack of transparency in some Aboriginal organizations, poor communication and information dissemination to their members, a lack of youth involvement in decision-making, and other organizational difficulties indicated that capacity issues are still present in many communities. Furthermore, some focus group respondents drew attention to differences in capacity between wealthy and well-organized mining companies and small and relatively impoverished Aboriginal organizations. Others drew attention to capacity differences among the IBA community signatories, which, they felt, enabled some to achieve better IBA outcomes than others.

Finally, as with the key informant interviews, the question of the degree to which the IBAs are *ensuring adequate EA follow-up* was understood within focus group discussions as *ensuring follow-up* – period. There is no question that, in contrast to the process of EA, through which some regulatory authority (sometimes created just for the purpose of rendering a decision) sets a course of action in motion with few mechanisms for following outcomes and continuing discussions with the proponent and opponents, the fourteen IBAs have enabled post permitting follow-up. This is clearly manifest in open and regular communication between IBA signatories, site visits, mine monitoring groups, the presence of an Aboriginal employment and training coordinator in each community, and grievance processes for workers who have felt unfairly treated. That said, it is also evident that follow-up mechanisms are not deemed sufficient by most of the IBA community signatories, especially with respect to the degree to which the communities can influence let alone halt mine operations if they determine that an outcome is not as was expected. Certainly, focus group participants noted that the three mining firms were generally responsive to community concerns, but many saw their responses as constituting appeasement rather than compromise.

In sum, the community-level focus groups painted a less complimentary picture of the performance of the region’s fourteen IBAs than was revealed through the secondary socio-economic data and the key informant interviews. Indeed, the IBAs have created new relationships between developers and would-be opponents, delivered benefits to local communities, relieved some capacity strains, and enabled some post-project approval follow-up, all in a way never achieved before through regulatory processes like EA; however, the relationships are a ‘work in progress’, some of the benefits are problematic and/or simply insufficient, capacity issues remain, and the influence that communities hold when they seek to follow up with companies is less than expected or hoped. These perceived limitations are reflected in the various concerns that were raised in the focus group discussions, which are summarized in Table 2. These concerns pertain to *benefits, transparency and community involvement, and mining-related impacts*.

Table 2: Summarized community concerns regarding IBAs and regional mineral development

ISSUE	CONCERNS
Benefits	<ul style="list-style-type: none"> • IBA benefits are focused primarily on mining-oriented tasks (e.g. mining employment and training); community members not involved in mining activities do not benefit proportionally. • Only non-management (e.g. ‘blue collar’) positions are available to Aboriginal workers at the mines. • Benefits received by Aboriginal communities are not commensurate with mining company profits. • A wider distribution of benefits is desired (e.g. for community improvement projects, social programming, cultural activities and preservation). • IBAs should include profit sharing and/or royalty payments to communities. • Aboriginal employment targets at some mines have not been met.
Transparency and Community Involvement	<ul style="list-style-type: none"> • The details of IBAs are not well known in communities, due to the confidentiality of these agreements or poor communication and information sharing by Aboriginal organizations. This makes it difficult for community members to know if they are receiving what they are entitled to. • Community-based IBA monitoring programs do not exist. The presence of these would help ensure mining companies fulfill their IBA commitments. • There are no opportunities for IBA renegotiation once an agreement has been signed. • Youth have not been meaningfully involved in decisions regarding regional mineral development.
Mining-Related Impacts	<ul style="list-style-type: none"> • Mining has exacerbated existing social issues and in some cases created new ones (e.g. substance abuse, family breakdown, cultural loss, an increased cost of living). • Mining has created a number of environmental impacts (e.g. site pollution and contamination, impacts to caribou). • Limits on the amount of regional mineral development are needed.

The fact that many of the concerns identified in Table 2 were raised in different focus group discussions indicates that they are largely shared by IBA community signatories. Though their presence might lead some observers to suggest that the region’s fourteen IBAs are not working, this is not an interpretation that the evidence presented herein supports. Rather, consistent with program evaluation, if one assesses the effectiveness of the region’s IBAs as per their aims and in comparison to outcomes from a time before IBAs, then it is evident that the IBAs have indeed been effective. It is also evident, however, that they have not as yet met the explicit, let alone implicit, expectations of many IBA community signatories. This likely derives from failures of negotiation and implementation, as well as the tendency for expectations to grow over time. Many community members have simply and understandably come to expect *more* from their agreements. Where conventional benefits such as employment and training may have sufficed for early agreements, community members now have a desire to see additional benefits for the *whole* community that can provide for improvements in community well-being and not just enrichment of some. These growing expectations either need to be managed or built into the next generation of IBAs negotiated in the Canadian North.⁸

⁸ This necessary evolution in the focus of IBAs is well-covered in Knotsch and Warda (2009). To be fair, such an evolution is evident in the three IBAs signed by the Tlicho Government signed in 1996, 2000, and 2006, with the last heavily focussed on ‘cultural’ development (De Beers, 2006).

Summary and Future Research

As IBAs grow in popularity and become de facto requirements for mineral developments in jurisdictions like the Canadian North, the need to assess their effectiveness will also grow. The challenge lies in developing appropriate evaluative criteria, and in overcoming the challenge of securing sufficient and representative evidence of outcomes. Our assessment of the fourteen IBAs signed in support of the Ekati, Diavik and Snap Lake diamond mines in the Northwest Territories attempted to address this challenge by assessing the degree to which the IBAs were meeting four broad aims using evidence from time series secondary socioeconomic data, key informant interviews, and community-level focus groups. While not all IBA objectives were fully met, this analysis nevertheless indicates that the region's IBAs have achieved a number of positive outcomes, especially when compared to typical outcomes associated with mineral developments in the past. Where past developments were often non-inclusive, dismissive of Aboriginal concerns, and largely uninterested in providing benefits to surrounding Aboriginal communities, the signing of IBAs in support of the three diamond mines to the northeast of Yellowknife has contributed to relationship-building, delivered benefits, contributed to capacity building, and enabled follow up in a way never afforded by EA. Limitations of both negotiation and implementation were evident, which, along with growing community expectations, will need to be built into subsequent agreements.

With respect to future research focussed on gauging IBA effectiveness, it is evident that much needs to be done to build upon this research effort given certain admitted methodological deficiencies (e.g. the use of generic IBA objectives against which the effectiveness of a suite of IBAs was assessed, the modest incorporation of community voices, etc.). These deficiencies can and should be addressed through future research in order to facilitate enhanced understanding of an increasingly common and potentially powerful governance tool in northern, Aboriginal settings.

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