

Indigenous Energy Across Canada

ONE RELATIONSHIP AT A TIME: THE PATH TO PROJECT SUCCESS

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Infrastructure development is full of risks, which are managed in a number of ways. Risk management might sound cold and impersonal, but it has the potential to incent real human connections and build genuine relationships. Key risks may have leading practice on how best to mitigate, transfer, ignore or hold those risks, but when it comes to energy development across Canada, meaningful consultation and accommodation is non-negotiable. As most are well aware at this point, the Crown must consult and accommodate where Aboriginal or Treaty rights are impacted. Far from being a mandatory 'checkbox' in the process of project development, the undertaking of engagement and relationship-building holds the potential for mutual benefits for both the project and the impacted First Nations, Inuit, or Métis community.

Genuine relationship-building is a solid foundation for partnership on energy projects, to the benefit of both parties. This partnership can take the form of Impact Benefit Agreements (IBA) Mutual Benefit Agreements (MBA) or equity participation arrangements, among others. Both IBAs and equity arrangements have the potential to grow economic and social prosperity, but determining which approach is the best fit will be influenced by the priorities and capacity of both the developer and the Indigenous community.

In both these common approaches there are similar objectives:

- Compensation for and mitigation of potential impact
- Influence or control over project design and development
- Securing benefits for the community
- Securing social license
- Working towards consent and support of the project
- Reduced risk of opposition or disruption
- Improved financing as a result of managed risks

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Both also reflect an underlying premise that it is no longer acceptable to develop resources or energy infrastructure in a manner where impacts fall to one party, and benefits to the other.

When comparing and contrasting IBAs and equity arrangements, some key considerations are the degree of potential impact, the capacity and interest of the community in the project's development and management, the project's term, risk tolerance of either party, and financing and funding opportunities.

BOTH PARTNERSHIP TYPES REFLECT AN UNDERLYING PREMISE THAT IT IS NO LONGER ACCEPTABLE TO DEVELOP RESOURCES OR ENERGY INFRASTRUCTURE IN A MANNER WHERE IMPACTS FALL TO ONE PARTY, AND BENEFITS TO THE OTHER.

Impact Benefit Agreements between a project developer and impacted Indigenous community formalize project benefits sharing. Often, these IBAs will provide some employment, training, and contracting opportunities, but the economic benefits will often be tied to the project's degree of impact to traditional lands and lifestyle (e.g., land impacts, hunting and gathering impacts,

etc.). Regardless of how well the project is performing, the IBAs will guarantee a steady revenue stream to the Indigenous community. This can be a safe bet for risk adverse councils but holds the potential for serious revenue inequity in the case where the project is successful and very profitable.

Pivoting from partnership to ownership, equity participation agreements clearly scale the revenue sharing between the project developer and community as the project success and profitability increases. If the energy project does well, the First Nation, Inuit, or Métis equity partner is also going to do well and see greater revenues. The inverse is also true. In these equity arrangements, which are becoming more prevalent in the eastern provinces, the Indigenous partner has a greater say in project operations, as they are a shareholder. It also arguably provides more security to the developers, as the Indigenous partner is a proponent of the project, and no longer a potential opponent. Both partners would look to maximize the economic benefits of the project, while minimizing the adverse economic, environmental and social consequences flowing from the project. Without focusing too much on the direct revenue arrangement, equity arrangements will often also include guaranteed or



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preferential opportunities for contracting, procurement, employment and training.

To be clear, in either an IBA or equity arrangement model, the duty to consult and accommodate is neither negated nor automatically fulfilled. But the relationship between developer and community becomes formalized and clearer, adding transparency and certainty to an otherwise risk-filled process.

Managing project risk is a mandatory part of project development. But the means of managing risk holds so much potential for empowerment, leadership, and benefit. Project success and economic development are not an end in themselves, but rather a means to an end – the end being healthier and more prosperous First Nations, Inuit, and Métis communities, and Canada as a whole. All the while moving the dial on reconciliation through real connections, business developments, and cultural education – one relationship at a time.

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